

[23rd February 1948]

II.—MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.

THE DEPUTY PRESIDENT :—“ I have to announce to the House the following message from His Excellency the Governor, dated 30th January 1948.

‘ In pursuance of section 82, sub-section (3), of the Government of India Act, 1935, I, Archibald Edward Nye, Governor of Madras, hereby recommend to the Madras Legislative Council the consideration of the Motor Vehicles (Madras Amendment) Bill, 1948 ’.

III.—GOVERNMENT BILLS.

(1) THE MADRAS SUPPRESSION OF DISTURBANCES BILL, 1947—*cont.*

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ Sir, I rise to oppose this Bill. This is an independent House and is not bound by whatever might have been done in the other House. This Bill ought to have been properly called the ‘ Shoot as You Like ’ and ‘ Kill as You Please Bill.’ I am very sorry that the Hon. Ministers have not realized the repercussions of this Bill. Let me tell them that the members of this House and you, Sir, may not be safe if this Bill is passed into law. The people to whom you are handing over the power to shoot may, even for a few simple offences committed in an area get the area declared ‘ a disturbed area ’ and snatch away power from you on the ground that they have to shoot a number of people including responsible officials on account of the fact that they will be a menace to the peace of the area. Clause 5 of the Bill says :

‘ Any Magistrate, and any Police Officer not below the rank of Sub-Inspector, may, if in his opinion it is necessary so to do for restoring or maintaining public order, after giving such warning, if any, as he may consider necessary, order fire to be opened, or otherwise use force, even to the causing of death, against any person who in a disturbed area is acting in contravention of any law or order for the time being in force in such area . . . ’

According to the wording of the section, it is not necessary that there should be an unlawful assembly, it is not necessary that there should be any disturbance. Any Magistrate or any Police Officer not below the rank of the Sub-Inspector may go to anyone’s house at any time of the day or night, call him out and say : ‘ You are a menace to the peace of the area ; therefore I have to shoot you.’ He need not even give a warning ; he may simply shoot. What does this mean ? It means that the Government have become panicky and want to grab at power. Under the grab of democracy, they are only trying to grab at as much power as possible and put the civil liberty of the individual into jeopardy. Clause 6 of the Bill says :

‘ No prosecution, suit or other legal proceeding shall be instituted, except, with the previous sanction of the Provincial Government, against any person in respect of anything done or purporting to be done in exercise of the powers conferred by section 5.’

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" Now let us see what the Government of India have done. There was a similar provision in section 270 of the Government of India Act, 1935, which read—

No proceedings, civil or criminal, shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connexion with the affairs of the Government of India or the affairs of Burma of the Governor-General in his discretion, and in the case of a person employed in connexion with the affairs of a Province, of the Governor of that Province in his discretion.

There is practically no difference between clause 6 of the Bill and the section I have quoted. The Government have retained the power to protect persons who want to snatch away the civil liberty of the people, in spite of the fact that we are living not in 1935 but in 1948 after we have attained independence. Such a power is sought to be retained by Ministers who call themselves democratic and popular Ministers and who are sitting there on account of the support of a very popular party, namely, the Congress Party. If you will refer to the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, you will see that the section 270 is omitted. That shows that the Dominion Government felt that it was against the principles of democracy to retain such a power. I ask the Hon. Ministers: Are we, the Ministers of this Province and the members of this Legislature, to be the first rebels against an act of the Dominion Government? While they felt that such a section should not be retained, is it right on our part to retain a clause to that effect in the present Bill?

" Now Sir, what will be the effect of this measure. As I have said, the Government have become panicky. They are feeling that they have lost popularity. They are feeling that they must have sufficient power in the next general elections in order that people may be afraid. Sir, if at all such a power was necessary, if at all shooting was necessary without the permission of a District Magistrate or a first-class magistrate, I should say that it was on the occasion of the assassination of Mahatma Gandhi. If I were there, excuse me, I should have been a breaker of the law. I would have excused people for lynching the assassin to death on the very spot. Have you done that? Democracy demands, justice demands, and fairness demands that that person should be arrested and brought to trial. It should be proved before a court of law that he is a guilty person. All this procedure will have to be gone into by a Democratic Government. That was what was done in the case of that man, the alleged assassin of Mahatmajii. If you have not shot that man immediately who had taken away the life of Mahatma Gandhi, whose life was more precious than hundred thousand lives, if you had not given such power to anybody, I cannot understand how any ordinary Sub-Inspector could be empowered to shoot anybody, at any time, either in the day or

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in the night, even without giving a warning. And then the Bill says that such an officer will be protected by the Government. What I submit is that such acts do not redound to the credit of a Democratic Government. Is this to be called the second Rowlatt Act in the history of this country? When the Rowlatt Act was passed, all the leaders of India cried hoarse against that Act and condemned it with all their vehemence. Perhaps the spirits of Dyers and O'Dwyers are still hovering over this Legislature. I would request the Hon. Ministers and hon. Members of the House to realize what would be the opinion of the public outside the four corners of this House. Member after member from the Congress benches, including my hon. Friend Mr. Natarajan argued in favour of passing this measure. In spite of the fact that he is a very able lawyer, his halting advocacy of the Bill, the arguments that he has advanced and the very submissive manner in which he has suggested amendments showed that he was feeling with the opposition that such an Act will not redound to the credit of the Government. My hon. Friend Dr. Sir A. Lakshmanaswami Mudaliar who also spoke in favour of the measure, also spoke in the same strain. All the members of the Congress benches, in fact, did not wholeheartedly support this measure. They felt that such an Act would not be consistent with the democratic spirit of the Government and the country. Such being the case, the Government should consider, not once, but a thousand times, before bringing forward measures like this and passing it through the Legislature.

“ Now Sir, what is the urgency with regard to this measure? My hon. Friend Mr. Suryanarayana Rao was perfectly justified in saying that this Act was not going to serve any useful purpose. He said that only after the disturbance has taken place that you are going to declare an area as a disturbed area. By that time, enough havoc would have been done and many lives would have been lost and much loss would have been caused to properties. Only then you are going to give power to the police officers to shoot. Therefore, he asked what was the use of this Bill? Sir, his arguments cannot be refuted by any man who appreciates democracy.

“ Then Sir, my hon. Friend Mr. Narayanaswami Nayudu raised certain points which the Hon. Minister could not answer. (The Hon. Dr. T. S. S. Rajan: ‘ Wait a minute ! ’) Well Sir, I am surprised to hear that the Hon. Minister has not heard those points. (An hon. Member: ‘ Who said so? The Hon. Minister has not yet answered ! ’) Sir, from the manner in which those points were received, I am afraid that the Hon. Minister has no points to answer. (The hon. Sri K. Madhava Menon: ‘ Wait and see. ’) I ask what is the reason for this urgency? Probably the reason for rushing through such pieces of legislation in this House and the other House is this. The Government are very complacent and very indifferent to public opinion. They think that they have got the majority in the Legislature and that they can pass any measures they like with their majority, ‘ whatever the public outside may say about them. But they forget that there is a day of retribution.

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A day is going to come surely, when they will have to answer before the bar of public opinion. It is not very far off. It may be much nearer than most people think. As a Hindustani poet says :

سن تو سہی جہاں میں ہے تیرا فسانہ کیا
کہتی ہے تھکھو خلقِ خدا خائبانہ کیا *

which means, 'Hear what other people say about you outside; do not be self-complacent; do not think that you are very safe.' So also, I would ask the Hon. Ministers, 'Hear what other people say about you outside. See what they write about you. Understand the feelings of the electorate.' That was exactly one gentleman was remarking to me this morning. He said that slogans were written against the Ministers in the electric trains. That shows clearly which way the wind blows. That shows the unpopularity of the Ministers. It shows that the Ministers are not doing their duty to the people. It is therefore necessary that they must review their own acts. They must realize what they have done during these months during which they have been in office. After all what have they done, excepting changing the names of some towns into *Patnams*. What is it that you have done substantitally for the well-being of the people in the Province? These acts do not redound to your credit or the credit of your party or to the members of this Legislature. Therefore, Sir, we on this side must realize our responsibilities and must not be a party to the passing of this piece of legislation. (Interruption.) I am saying, Sir, that these things are going to recoil upon them. We know the feelings of the public outside; we know what they feel about the Government and about the Ministers. You are going to reap what you have sown. The general elections are coming after some months. You will then see where you will be. You will be placed in your proper places and you will not find yourselves in the Treasury Benches occupying these exalted places. (Interruption.) (The Hon. Sri Kala Venkata Rao : 'Do you want to come here?'). I do not want to be at your mercy, but you will be at the mercy of your own people and your own people will not spare you. Sir, in a joint electorate, I may not find a place here or on the other side; you will not allow me to come. I know my position. But where will you be? "

THE DEPUTY PRESIDENT:—"Let the hon. Member confine himself to the subject. He has already taken too much time."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"This is also included in the subject, Sir. I shall finish just now, Sir. I was going to suggest that such pieces of legislation should not be rushed through. Nothing is going to be lost if this Bill is delayed by another week. Let the Government appoint a Joint Select Committee to examine this Bill. Let them not brush aside everything that comes from the opposition with contempt. There may be something good, something reasonable and something substantial,

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which may come from this side of the House. Let them not think that all wisdom lies only with them and not with others on this side. Whether it is possible for us to do anything in the Select Committee or not, is a different matter. Many things can be done between now and when the Bill is actually passed through this House. When we are passing lawless laws like this, we can even go to the extent of doing away with some of the formalities and rules of procedure laid down by the Legislature, and sit in a Joint Select Committee and thrash out the various clauses of the Bill. It is after all a very small Bill; it contains only 6 sections; it is only just a mere scrap of paper, which can be thrown aside or lost. (Sri B. Narayanaswami Nayudu: 'Like Desdemona's handkerchief!') The Joint Select Committee can find out the defects in this Bill and suggest amendments to remove them and make the Bill innocuous and as harmless as possible. If you want to pass this Bill as it stands and without any amendments at all, I, for my part, would be the last man to support it."

* THE HON. DR. T. S. S. RAJAN :—" Mr. Deputy President, Sir, I was rather amused the other day when I heard my distinguished friend, the hon. Dr. Sir A. Lakshmanaswami Mudaliyar, accusing me of a grave error of judgment—or I do not know what exactly he wanted to say against the Leader of the House—for having arranged the programme of work with regard to this Legislature. The fact that the Hon. Home Minister was not present here that day, gave him the cause for his complaint. But the Government have got to carry on their business whether a particular member of the Government is present or is away. The fact is that this piece of legislation has got to come up before this Legislature and members opposite cannot complain, because they have got the full liberty to criticise or move amendments, and accuse the Government that the Bill has not been handled according to their likes. It is not proper to suggest that simply because the Hon. Home Minister does not happen to be present here on this occasion, to pilot this Bill through, it should be removed altogether from the field of legislation. The exigencies of Government business sometimes compel responsible Ministers to be away from the City on duty and no Legislature can postpone its business because that particular Member happens to be away. The joint responsibility of the Government is always there and we take up on our heads the entire responsibility of pushing this legislation through and take such advice and opinions as are offered by the House, whether they are in favour of it or against it. Therefore, I do not really see where any impropriety comes in. The hon. Gentleman is reported to have said that it is neither fair, nor courteous, nor equitable that such a measure should be placed before the House in such a manner. I really fail to understand why all these adjectives should come in here. The programme has been circulated to hon. Members already and we are here to answer all the criticisms from the opposition. As the Leader of the House, it is my duty to place before the House such legislations as are necessary and get such legislative sanctions as are required for

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such measures. I may tell you, Sir, that we were not in a hurry with regard to our legislation so far. But now we have been for months sitting together in both Houses and our complaint is that we have not been able to get through our heavy legislative programme rather quickly. It may be that this House does not delay the passing of Bills very much, because of the simple reason that members here are only few as compared with members of the other House. But nobody can say that we have not given enough time or opportunity to the members of the opposition to say what they have got to say, and to criticise what they have got to criticise. So, I really fail to see any propriety at all in the statement made by the hon. Member.

" Secondly, Sir, with regard to the merits of this legislation itself, he has abstained from offering any criticism. Rightly so perhaps, because he does not claim to be a lawyer and he has left it to other lawyer members of the House to criticise it according to their legal standards.

" But he said that the Government ought to have made endeavours to find other ways and means to bring about the result which this piece of legislation is intended to bring. What did he suggest? He suggested that an informal discussion between the parties should have taken place first of all and that the matter should have been placed before them for their acceptance and that their co-operation should have been obtained. For what should their co-operation be secured? It could not have been secured for legislative Acts which are coming before the House. Only their goodwill could have been secured for creating the necessary atmosphere. That was evidently what he meant. Incidentally he complained that the Ministers travelled about and they did not see all the parties while they were on tour and so on. I certainly repudiate that statement in its entirety. Certainly it has always been our policy to meet all and it is good for the administration also that we should meet all people, good, bad, indifferent and hostile, explaining if necessary, what they have to do. But for that we can't carry on the administration or carry the people along with us. My hon. Friend over there challenged us about the lack of confidence that has been created in the public mind. Of course that is a matter that can be tested. That is not a thing that need be challenged on the floor of the legislature and therefore I am not going to make a counter-statement to what he has stated. But I must state that we know and it is to our interests to know that we carry our people with us. It is a democratic Government and in democracy we must carry as far as possible a good portion of public opinion along with us.

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" With regard to this Bill, Sir, I must say that it has been before the public for quite a long time and it has been discussed in the other House. Hitherto I have not heard one hostile criticism against the Bill either in the other House or on the platform outside. It means that the people are aware of the grave things that have occurred in the country both in the North and in some places in the South. They are quite aware of the realities. With

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the limited powers in our possession we have not been able to control things on many occasions. It is true that legislation will not prevent any crime. That is a fact which everybody must concede. Because legislatures enact against so many evils, are not thefts and murders happening every day? Human nature being what it is, we will have to take powers to deal with the critical situations that might arise though we do not look for them. What can you do if a number of people take it into their heads one night simply to take the law into their hands and begin to kill and plunder and assassinate men, women and children. If such a thing happened it would be stupid on the part of any Government if they were to be irresponsible and did not take any action. If they are responsible they should certainly arm themselves with sufficient legislative powers as can be secured with the co-operation of the Legislature.

"Sir, this enactment which is before the House is not a new one. It has been passed by every provincial Assembly in India to-day and perhaps we come late in the scene, much later than they have done. In no Legislative Assembly was there any opposition worth the name which resisted the passage of the Bill. And we have simply more or less copied the Bill wholesale as in Bombay, Bengal and other places where it has been passed and put into the Statute Book. Therefore it is not a question of securing the good will of the various parties. It is not a political question. It is a question of administering justice to take time by the forelock and see that this Government has the powers necessary to handle a situation and that is exactly what the Bill is seeking to do. It may be expropriatory in nature but it is meant to be used only in an emergency.

"Sir, there was talk about this legislation being a panicky legislation. But we shall have to be forewarned and we must be careful to see that such things as have happened in other parts of the country do not happen in this part of the country for lack of necessary legislation and powers with the Government. Sir, it is only with that motive that this legislation has been brought forth before this House. I am simply drawing the attention of a few hon. Members who oppose the Bill to the sad state of affairs that exist elsewhere and where innocent people are being harassed and they become victims of mob outrages in which no reason could exist, except that passions are let loose. Just imagine what has happened there. Lakhs and lakhs of people have been asked to leave their goods behind, their properties behind, their houses behind, all their children have been killed and their women are in rags. You may see this picture in the refugees who are coming into our Province. (Interruption.) They come to us because we house them and take them in. Perhaps it is sheer justice that we should take them in when they come in such a miserable state. Such things happened and we do not want that such things should happen in our midst for want of law that could give protection against such things. To prevent such crimes against innocent people we want to take power through this legislation. Of course legally we may not produce a perfect picture of a constitution or law which would be

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free from blame or could be free from criticism. I am sure that such an Act would be resisted by people who believe in democracy and in the rights of democracy. But, Sir, the democracy has its own limitations. If what has happened in this country is the result of democracy, well, that democracy has got to be handled properly and handled fairly. The justification for this are the innumerable crimes that have been committed and the fact that there have been hundreds of murders and that people have lost their all and have been driven from place to place. All that could be prevented perhaps with a strong hand. I do not deny it. But it is necessary that we should possess powers to meet any unanticipated evil that might come on suddenly and this is the sort of provision which would arm us with powers. But these will not be used ordinarily but only on occasions when it becomes absolutely necessary that we would be entitled to use these powers. That is our justification for introducing this Bill.

"We have been told that we should compose differences between communities and then this Bill would not be necessary. It is not possible to do like that. My hon. Friends accuse us on two points, that the Ministers go about and do not consult conflicting elements and try to compose their differences. That is a charge which I repudiate. The second charge is that this piece of legislation is not enough to meet the great danger with which we are faced in the country. I say, Sir, that this is a very simple piece of legislation giving us certain powers which a democratic Government ought to have to save the country from ravages. It is true that we are a democratic country. It is also true that as a democratic country which is faced with such a tremendous amount of crime the Government should have certain legislative powers. Sir, that is the only justification for the Bill here. Sir, I thought it best to answer my distinguished Friend's criticism which I believe has lost its bearing really in the state in which it is offered."

* RAO BAHADUR SRI D. KRISHNAMURTI :—"Mr. Deputy President, Sir, this Bill has been subjected to very violent criticism; it has been called 'a Draconian Code', another Rowlatt Act, etc., etc. It is no doubt an extreme piece of legislation intended to forearm the Government with a view to prevent violent outbreaks of law, resulting in looting, rape, arson and plunder. After the 15th of August last events have taken place in other parts of India the mere narration of which will curdle the blood in one's veins. I am not here to apportion blame to any of the parties but I would say that if such a situation should arise in this province our own Government should not be helpless, having at their command only the normal powers under the common law but they should be armed with the requisite powers which they could use should such an emergency arise. It has been pointed out that under clause 3, the Provincial Government may declare that the whole of the Province, or any part thereof specified in the notification 'a disturbed area' and that they may add to, amend, vary or rescind any such declaration. I say, that there are sufficient safeguarding

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clauses in the Bill itself. No doubt this is an extreme piece of legislation. But, Sir, I have had the misfortune of staying in Delhi in the month of September last from the 7th to the 10th. I saw with these eyes lawlessness, bloodshed, arson, looting, etc., at the Capital City during those days. I had to go in a motor car with an escort. I am not here to blame anybody. I want you to know the situation in Delhi could not be handled immediately for I am not apportioning the blame on this section or that section of the public. Here, we have had certain types of incidents in the border areas of the Andhra Desa adjoining the State of Hyderabad and it will be foolhardy on the part of the Government to sit silently without doing anything to meet should such an emergency arise. Clause 4 confers upon the Government extraordinary powers for enhancing the sentence to meet the situation. It enhances the sentences to one of death. This enhancement is done with a view to infuse terror in the minds of the law-breakers. That is of course an extreme penalty which is likely to be inflicted on the law-breakers under extraordinary circumstances in a disturbed area. Clause 5 is rather loosely worded and it vests the powers in the hands of executive officers. In the Assembly the words 'head constable' have been changed into 'Sub-Inspector'. The amendment of my hon. Friend, Mr. Narayanaswami Nayudu would to a certain extent check the misuse of the powers by underlings. It is true that men are actuated by passions and feelings and sentiments play a great part when people resort to mob violence and mass murder. In such a case the executive officer, namely, any magistrate, and in his absence, any police officer not below the rank of a Sub-Inspector may use his extraordinary powers. In normal conditions they cannot use such powers. Now this throws a very heavy burden on the Government. Of course the Government are fully aware, that they are a popular Government and they should not abuse the extraordinary powers which they are taking now under the provisions of the Bill to settle personal grievances or even for electioneering purposes or for any other ulterior objective. It is the duty of the Government to invoke the powers under this Bill in a proper manner and in all sanity without being irresponsible. Should they abuse these powers then they will have to read the writing on the wall that they are found wanting. As a Cabinet consisting of 13 elected Ministers they are responsible to the electorate and they will think twice, nay even ten times, before they declare a particular area to be 'a disturbed area'. I submit that this legislation which is sought to be placed in the Statute Book is intended to be invoked only under extraordinary circumstances for proper and adequate grounds. I do not credit the Government with any ulterior motives for trying to redress private grievances under the cloak of this Act. I expect that the Government will rise above all these considerations in exercising the powers conferred by this Bill.

"This Bill seems to have been hastily drafted and therefore certain mistakes have crept in. They should have clearly and logically defined what is 'a disturbed area'. That is one of the defects

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in the Bill. They should have defined it in the Bill, instead of leaving it for a special connotation to be given as and when occasion arise. They should have made clear their intentions regarding the declaration of a particular area as a disturbed area. Lastly clause 6 requires a slight modification. Clause 6 reads, 'No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Provincial Government against any person in respect of anything done or purporting to be done in exercise of the powers conferred by section 5.'

" This should be slightly amended with a view to bring under 11-45 control the executive officers. Executive officers who abuse the powers conferred on them under clause 5—Deputy Collectors or magistrates or police officers—should be told that they will be taken a.m. to task if they are found to have abused their powers conferred on them by the provisions of this Bill. The whole clause 6 may be omitted or amended. I place before the House an hypothetical case. Suppose, taking advantage of the fact that a particular area has been declared 'a disturbed area', an executive officer shoots down a man for private reasons. Now he is free from all blame, and this clause emboldens him to shoot down men as and when he likes. He will be free from any after-effects for any act he does. But when once these officers are told that their decision can be challenged in a court of law, if they should have abused their powers there will be greater sense of responsibility and there will be greater sense of duty in them. This clause seeks to give absolute immunity from challenging the actions of officers done in the heat of the moment or for ulterior purposes, and also those acts done with a view to protect the life and property, and prevent disturbances. But, why the ordinary right of a citizen to challenge the decision in a court of law is removed? I am afraid a certain amount of self-complacency and dare-devilness will set in in the mentality of the executive. They are the underlings of police and magistrates are not responsible like the Ministers. Ministers know that they are responsible to the electorate for all they do, and should they transgress, their conduct will be reviewed, and they will have to face the electorate on that issue. But, in the case of subordinate magistrates or police officers who use powers for ulterior purposes, whatever they do will be sacrosanct, and their conduct cannot be questioned without the previous sanction of the Government. According to me, clause 6 seems to be rather unnecessary. If an officer does an act which is not *bona fide*, and which is intended to serve personal ends, his conduct should be challenged in an ordinary court of law without let or hindrance. His conduct should be questioned in a competent court of law, and the offender should be brought to book. You want to award enhanced sentences for offences mentioned in clause 4 of the Bill with a view to create terror in the minds of the people who want to break the law under peculiar circumstances. But you are creating in the mind of the Inspectors an impression that they are immune from any criticism, and they and the magistracy can do what they like. Sir, this will put a premium on their irresponsibility and indiscretion.' May I

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ask the Minister in charge what is it that going to happen to an officer, if his conduct is questioned in a court of law subsequently? Why should a provision be enacted to protect him for all acts of commission and omission? I venture to submit that by giving such extraordinary powers to the subordinate magistrates and executive authorities, Government will be placing in their hands tools of a very dangerous character which are likely to be used to the greatest detriment of public peace. This will ultimately redound to the discredit of the popular Government. When once a man is shot down, his life is gone. It is very difficult to get evidence. But, where there is evidence, and where the relatives of the dead person want to question the conduct and decision of the police officer, they should have a right and opportunity to do so without the previous sanction of the Government. Sir, Government is a corporate body, and their information is always based upon the information of the subordinate officers—Inspector of Police, District Superintendent of Police and the Inspector-General of Police, one chain of officers approving the action of the police officer. The result is that it would be very difficult for a person to get justice.

“With these words, I suggest that for the present, a Bill of this type is absolutely necessary in the interests of preserving public order. It is better that the Government have forearmed themselves with ample powers with a view to tell those people who are interested in breaking the public peace and order that their conduct will meet with severe punishment including capital punishment. With these remarks, Sir, I support the Bill and request the Government to drop or alter clause 6 of the Bill if they have no serious objection.”

* K. UPPI SAHIB BAHADUR:—“Sir, the Hon. the Leader of the House just told us that Bills can be introduced and discussed by any member of the Government even though the subject may not relate to his portfolio. It is not the first occasion, Sir, when we felt that the Member in charge of a particular portfolio ought to be here when matters relating to that portfolio are discussed. We have on more than one occasion brought this matter to the notice of this House. It is not because we feel any disparagement about the Member who temporarily handles the Bill, but because we feel that the Government Member who temporarily handles a Bill may not, under ordinary circumstances, be able to give us full information. It is on account of that and on account of that alone we insisted that Bills must be introduced by Government Members who deal with the subject from day to day. It is not with any idea of disparagement or belittling their position that we have been saying that. It is only our desire to get full information and therefore we said that. The other day, Sir, when the Revenue Minister was absent, we felt that the Member for Agriculture may not be quite competent or may not be able to give all the information that we required, and you know, Sir, that Government also in the end recognized that. We are thankful to Government for that. In the same manner, the Hon. Minister for Agriculture is

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not handling the portfolio to which this Bill relates. He is handling the portfolio only temporarily. It is only a make-shift arrangement. The moment, the Hon. Minister for Home returns, the Minister for Agriculture will have to hand over that portfolio to him. His interest also in the matter will only be temporary. That is why, Sir, we insist that when such matters of a vital importance come up for discussion, the Member in charge of the portfolio should handle it. It is not going to matter much if the Bill is delayed for two or three days. That is all I have to say in the absence of my hon. Friend on this side.

"It is said that a situation has arisen in the country which demands urgently the passing of such a draconian law. I remember once it was said by somebody that Mussolini wanted to enforce his hand with a very powerful legislative weapon. He asked one of his friends what to do to bring some law to this effect, and that friend at once suggested 'the best way is to import the Indian Penal Code here'. Sir, our Indian Penal Code is so drastic, so terrible that even Mussolini hesitated to introduce such clauses in Italian law. Now, what is it that the Bill says? Government demand a power to declare 'miniature Martial Law' to prevent bloodshed or riots in the country by declaring village miniature Martial Laws. That is the position. I am not a lawyer. I do not wish to deal with the details of the law. But the effect of the Bill is that they want to declare miniature Martial Law. Sir, Government have to be careful in this. I warn them—rather I advise them—that there are political parties in this country who will use that power against anybody. At least the present Government have got belief in God and belief in moral law. But there are parties in the country who have no morality. They do not seem to believe in God. All that they believe in is 'expediency'. We do not know whether the same party will continue in power or whether some other party will come into power in the future. If we enact such a law and leave it in the hands of such people, every one of us will have to repent at a time when repentance would be of no avail. It will be like the atom bomb. Once Germany, America and England wanted it. Now every nation wishes that it had not discovered such a thing at all. That is the position, Sir, now. This legislation is not going to be a panacea for the ills.

"Have you not got the ordinary Police or the Special Police? Why these Police cannot be used? They will do the work better than the ordinary Sub-Inspector or the Assistant Sub-Inspector. If the ordinary Police and the Special Police cannot deal with the situation and control it, then leave it to the Military. They are better people; they are honourable people. They will do it better and in a more thorough manner than the ordinary Police Sub-Inspector. That is all I have to say on this matter. I would advise the Government to be careful before they forge such a terrible weapon and leave it for the future which may rebound on everybody."

12
noon.

* THE HON. SRI K. MADHAVA MENON :—"Mr. Deputy President, Sir, very strong criticisms have been levelled against

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this Bill. As I said in the very beginning, there are some drastic clauses in this Bill, but I am afraid, an unnecessary ghost has been kicked up and an impression given that this is such an outrageous measure and that nowhere in the country or nowhere in the world such a legislation has been enacted. I do not want to be misunderstood if I say that certain cheap jibes have been thrown at us, saying, "Are you not a popular Government? Are you not a Democratic Government? Is this what we expect a Popular Government or a Democratic Government to do?" I forthwith say, Sir, that we pride ourselves that we are a popular Government or a Democratic Government. I say a popular Government or a democratic Government is expected to govern and not to allow anarchy to overtake us without any warning. We must govern and govern in the best interests of the Province and protect the life and properties of the citizens. So, you cannot say, because it is a democratic Government, no powers should be taken to protect the people, to protect our own brothers and sisters from being killed, abducted or raped. Such powers we have to take to meet emergencies. Otherwise, we are not worth the name of a democratic Government or a popular Government.

"Sir, I will reply to the general charge levelled against the Police. Some hon. Members have said, you are going to give power to the Police who have been very mad all through and who have always been shooting people at sight. But, Sir, we have to understand the Police during the period before August 15th and the period after August 15th. I want also to place before the House that the policeman is an Indian. He is no longer a mercenary and he has the interest of the country at heart and thinks that the people of this land are his own people. I may also state that every now and then, calls for Police assistance are coming to us and we have to answer them. At the same time, some hon. Members threw cheap jibes at us saying that we are giving enormous power to the policemen who are irresponsible, who have nothing to lose and everything to gain. Sir, such general talks are not warranted under the circumstances that we are living. I say, Sir, that a policeman feels as strongly as anyone does. He feels that he has got his own stake in the country as anyone else. He also wants this country to be properly governed.

"With these general remarks, Sir, may I just point out that this is not the only Province where this legislation has been carried out? My hon. Friend, Mr. Farookhi, said that it is a Draconian code. But, I may say that other Provinces in India passed this legislation much earlier because they had the necessity to pass it. In the Bengal Province, for instance, they have passed an identical Bill without any change. Not even a comma has been changed. The Bengal Bill says: 'Any Magistrate, and any Police Officer not below the rank of an Assistant Sub-Inspector, may, if in his opinion, etc., etc.' We have no Assistant Sub-Inspectors here. It says: 'Any Magistrate and any Police Officer not below the rank of an Assistant Sub-Inspector, may,

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if in his opinion, it is necessary so to do for restoring or maintaining public order, after giving such warning, if any, as he may consider necessary, fire upon, or otherwise use force, even to the causing of death, etc., etc.' That is what is contained in section 5 of our Bill. Again, the Bengal Bill contains a clause similar to clause 6 in our Bill, viz., 'No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Provincial Government, against any person in respect of anything done or purporting to be done in exercise of the powers conferred.' "

K. T. M. AHMED IBRAHIM SAHIB BAHADUR :—"What is the reason for this identity, Sir?"

* THE HON. SRI K. MADHAVA MENON :—"I wanted to point out that it is not this Government alone that has taken such powers. One hon. Member said that this Provincial Government alone has taken such Draconian powers, and that no other Provincial Government has taken such powers. I want to point out that Bombay, Bengal, the North West Frontier Province and also the Punjab have passed identical Bills."

DR. V. K. JOHN :—"Has the Hon. Minister no better argument?"

* THE HON. SRI K. MADHAVA MENON :—"I am also following at times the practice of quoting precedents as a lawyer which, I hope, my hon. Friend would not object. Even in the North West Frontier Bill, they have got identical sentence. The Punjab Bill also contains the same sentences. So, it is not as if by a brain-wave, this Provincial Government want to take certain powers and to introduce certain changes. In fact, the other Governments took it up much earlier. Sir, I entirely agree with Dr. Lakshmanaswami Mudaliyar who said that the treatment of symptoms is not the right thing. I may state, Sir, that we are taking these powers not to treat the symptoms alone. These powers are necessary to do much more fundamental things. These are intended to deal with certain situations, certain happenings, so that those happenings might not recur. It would be a most terrible thing if such happenings were to take us unawares. I want you, Sir, to visualise such a situation."

"Then, Sir, Mr. Suryanarayana Rao was asking, will not the ordinary law suffice? No, Sir. As a lawyer, I can tell him that the only provision under which we can deal with such situations, is section 144 of the Criminal Procedure Code, whereby we can prohibit certain things. But, I want him to visualize a situation where certain people are set up with a particular object to create mischief or goaded by particular interests. I do not mean communal troubles alone, Sir. Many other troubles are quite possible."

SRI R. SURYANARAYANA RAO :—"Has the Hon. Minister studied the Police Manual where powers already exist for the Police to take action in those cases?"

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* THE HON. SRI K. MADHAVA MENON :—“ I may tell the hon. Member, Sir, that those sections more or less give powers for protecting oneself. Such powers are given as a sort of protection under the Penal Code and such provisions will not be sufficient to control certain contingencies that may arise, contingencies, where excited people may go to loot, where our children may be killed or our brothers and sisters abducted or raped. If such a situation arises, the powers which are indicated in this Bill are necessary in order to act promptly to deal with such situations. It is rather amusing to me, to hear that I should not quote precedents and I hope Dr. John will not accuse me of quoting precedents. In the other House, the Leader of the Opposition and the entire Muslim League Party more or less supported the Bill. They only said that Government should be careful in using such powers when the situation arose. But, here, perhaps other considerations might have prevailed to say that everything about this Bill is wrong.

“ Sir, let me analyse how this Bill is not so dangerous as it is purported to be. Mr. Suryanarayana Rao was saying, what is the use of your Bill; you have first to declare an area as a disturbed area. Yes. Speeches were made that this Bill, when passed, would give extraordinary powers to a Sub-Inspector to shoot anybody, at any time and under any circumstances. That is not so, Sir. We are trying to give, as much as human ingenuity can give, sufficient protection and to see that such contingencies do not arise. Where there is trouble going on, where unrestricted looting, arson, abductions or rape are going on. I do not want to say with what motives—in such contingencies, the area has to be declared as a disturbed area. It is only in such cases, where an area has been declared as a disturbed area, these provisions will come into force so that more mischief may not be done. It is only to prevent further mischief being done that this is enacted. It is only when a house is on fire, we bring in fire engines so that the houses may not be burnt. On that account, we do not keep houses wet so that they may not be attacked by fire. In cases where such mischief is anticipated, you can impose section 144. But there has been difficulty for a Magistrate to take action under section 144, where there is nothing to act in anticipation of certain circumstances. There are certain things which we cannot foresee and in such cases, if we are to take action, immediately we can declare the area as a disturbed area and make use of the provisions of this Act.

“ Then, Sir, with regard to section 4, I did not see much of opposition. Even Mr. Narayanaswami Nayudu, relentless as his criticism was, had no objection to section 4 because, after all, it is only a question of wording. Some hon. Members pointed out that those cases should be tried by a Sessions Judge or by a Jury or by an Assessor as the case may be. As I said in the beginning let us analyse the nature of the offences referred to here. They are—attempted murder, abduction, rape, mischief by fire, arson,

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dacoity and so on. It has been asked whether people are not committing murders although there is the death penalty. That is the argument. But here I do not want to go into the ethics of the question of capital punishment. I have myself found it difficult to make up my mind on petitions for mercy. That is a different matter. Here we are enacting a legislation that should act as a deterrent on criminals intent on committing arson, looting, dacoity and so on. When conditions are disturbed some people want to make money by looting and dacoity and their idea is to make use of that money and live happily afterwards. They might not have that feeling if they come to know that they cannot get away with the loot and that they are likely to be punished with death. That will be a deterrent. Where there is serious disorder and where grave offences like looting, arson, abduction, rape and dacoity are committed, if we say that the offenders are liable to be punished with death in such cases, it is not a very harsh thing of which we need feel very nervous.

"Sir, the gravamen of the attack has been on clause 5. I was rather surprised to find such able lawyers like Mr. Narayanaswami Nayudu and Dr. John saying that the Bill gives indiscriminate powers to anybody to shoot. There is power given to shoot, but under what circumstances? An order is promulgated by a magistrate or any person duly authorised to promulgate an order under section 144 in a disturbed area. Simply because the Government have notified an area as a disturbed area, it does not give power to the police or the magistrate to shoot indiscriminately. Something more is required. The area must be declared to be a disturbed area and it must be followed by an order prohibiting certain things being done. Suppose a magistrate having jurisdiction passes an order prohibiting the assembly of more than 5 persons, then if any person contravenes that order in the disturbed area and if there is no other go except to resort to drastic powers, they will be resorted to to carry out the orders. A curfew order is passed and a man refuses to obey and he goes on looting and plundering. The Sub-Inspector or the man in charge of the thing, cannot wait till he gets a warrant from the magistrate or get the magistrate there, explain to him the nature of the offences committed and get his permission to shoot. The mischief will all have been done by the time the power is got in this way. What section 5 says is this:

'The officer may fire upon, or otherwise use force, even to the causing of death, against any person who in a disturbed area is acting in contravention of any law or order for the time being in force in such area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons.'

Sir, to say that even a pen-knife may be considered to be a weapon by the Sub-Inspector of Police is, if I may use Dr. Lakshmanaswami Mudaliyar's expression, a ludicrous absurdity. To say that even a person carrying a pen-knife may be shot at is entirely wrong. (Interruption.) The weapon should be declared as a weapon one should not carry."

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SRI R. SURYANARAYANA RAO :—“ Is there a definition of ‘ weapon ’ anywhere in the Bill? ”

THE HON. SRI K. MADHAVA MENON :—“ A definition of ‘ weapon ’ is not necessary. If there is an order prohibiting the carrying of weapons whether it be a pen-knife or not—it might include a pen-knife, it might include a pin also—if there is an order that you should not carry any weapon in a disturbed area, the carrying of a weapon is certainly an offence and it has to be prevented and action has got to be taken. I do not want to make things look ridiculous. Even a pin may be a weapon. A weapon is a thing with which you may commit an offence. (Interruption.) The courts are there to interpret the law. It is an attempt to make things look alarming to say that even a person who carries a pen-knife in a disturbed area is liable to be shot at. It is not so. If in a disturbed area the carrying of weapons is prohibited the power to use force comes in only if anybody contravenes that particular order prohibiting the carrying of weapons.”

DR. V. K. JOHN :—“ Then every order must contain the nature of the weapons prohibited. It is not in the Act.”

THE HON. SRI K. MADHAVA MENON :—“ We have not seen the definition in any penal enactment. In the Indian Penal Code the words “ weapon ” and “ dangerous weapon ” have been used though there is no definition of the word. The courts have not found any difficulty in deciding what these weapons are and I do not think the courts are going to find it difficult in these cases also.”

DR. V. K. JOHN :—“ The Sub-Inspector has to decide.”

THE HON. SRI K. MADHAVA MENON :—“ As regards the Sub-Inspector, I certainly feel that he will not be so ridiculous as to imagine that if I carry a pin, it is a weapon with which I can commit mischief. It is not correct to create a bogey that anybody can be shot at in a disturbed area.”

K. UPPI SAHIB BAHADUR :—“ What about weapons foisted by the Police? ”

THE HON. SRI K. MADHAVA MENON :—“ I have answered the unfair general charge against the Police. Nobody is interested in agent provocateurs. It is not correct to say that anybody can shoot at anybody in a disturbed area, although drastic powers are taken.

“ Then Sir, with regard to section 6, objection has been taken to the provision that previous sanction of the Government should be taken for the prosecution of any person in respect of anything done under this Act. This provision is necessary. In a contingency like this you should not leave the officer concerned in doubt as to what he should do. If he is exposed to the fear of prosecutions for any act which he has to do in contingencies like this

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when large scale murders and looting are going on, if he has to wait and see whether his action would be approved or not, if he is exposed to prosecution for anything done by him, it would mean that you would be putting him in such a position of fear that he will not take the right action in the right time." (Sri R. Suryanarayana Rao rose to interrupt.)

THE DEPUTY PRESIDENT :—" The Hon. Minister is not yielding."

THE HON. SRI K. MADHAVA MENON :—" The Police officer concerned should not be in a position of uncertainty and nervousness and think that he is likely to be exposed to prosecution even for things done properly. Under the circumstances he has to be protected in a legislation of this sort intended to meet unforeseen contingencies and not ordinary situations.

" Sir, another general remark which has been made is that this is nothing more than the Rowlatt Act. Sir, I should say this is an odious comparison. The Rowlatt Act and other criminal laws were made not for the protection of the people at large but for suppressing those people who wanted to overthrow the alien government in this country and establish an independent government. These people were fighting for the independence of the country but not for dacoity, not for arson and not for rape. They were fighting a foreign government in order to get independence and legislation like the Rowlatt Act was undertaken to suppress this freedom movement. Sir, to compare this legislation undertaken by an independent Indian Government, a Popular Government as we are called, for the protection of the community as a whole from certain contingencies which might occur, to compare a legislation of this kind with the Rowlatt Act and similar legislation undertaken by the British Government when we were fighting for independence and trying to throw off the foreign yoke, is to say the least, very odious. The comparison has no force in the discussion of a Bill like this. •

" I have nothing more to add, Sir. The intention behind the Bill is only to prevent crime. It may be said that even the devil does not know the mind of man and if people are to be hanged for their intentions, many of us might not remain here. But, Sir, you have to take us to be ordinary men and not extraordinary men. We have been avoiding the taking of these powers as much as we could. We have seen the signs of the times. In the other provinces, even though they have taken these powers much harm has been done. We want to avoid such a contingency happening by taking time by the forelock. If any such contingency happens—God forbid—we want to give as much protection as the Government can to the person and property of the people. That is the reason why we have brought forward this Bill.

" Sir, the hon. Member Dr. Lakshmanaswami Mudaliyar and Mr. Suryanarayana Rao said, and rightly said that the Home Minister should have been here to pilot this Bill. It is true, Sir,

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it would have been better if the Home Minister had been here to pilot this Bill. But he has to be away at Delhi in connexion with certain urgent matters. The Government cannot delay the taking of these powers much longer. If we do not pass this Bill now, we cannot do anything till the budget session is over. The Home Minister is attending a conference of Home Ministers at Delhi. I know definitely the objection is not because I am moving this Bill. The objection is that the Minister primarily responsible for looking after this matter will be able to give more information than what I have been able to give. I may say, Sir, that this matter has been decided at a Cabinet meeting and so I do not think the Home Minister has got any more information than any other Minister. Sir, we visualise not only communal trouble but other troubles also which are now brewing in various parts of this Province. There is an organized attempt to clutch at power by some means or other and create disorder in the country. We have to be careful and see that we are not taken unawares and tremendous harm done in certain parts of the country before we could take action. Labour troubles are there; everyone knows the conditions in Coimbatore. We have to be prepared for any disturbance on a vast scale. I know it may be asked: 'Are you going to use these powers in connexion with labour troubles?' It is not so.

12-30
p.m.

"We are not going to use this Act in the case of labour troubles. At a time when there is a labour trouble, other people will take advantage of it and create greater trouble not only for the capitalists but for the entire community living in a place. Such powers are necessary when such occasions arise. I hope hon. Members would not cross-examine me. The Act is not intended to be used against any person, it is not intended against any community. It is intended for the protection of the community, not against any individuals or class of persons. That is why we are asking for these powers. Hon. Members must trust us that we will not abuse the powers. My hon. Friend, Mr. Uppi Sahib warned us to be careful. We say we will be careful. We have to bear in mind that this Bill is in the interest of people in general. I have nothing more to say at this stage. When particular amendments are moved, I shall say then what I have to. I need not reply at this stage to the general trend of the discussion and to some opposition regarding particular clauses."

DR. SIR A. LAKSHMANASWAMI MUDALIYAR:—"A word of personal explanation, Mr. President, Sir. I am sorry that owing to unavoidable circumstances I was not present when the Leader of the House was addressing us. I should like to make it very clear that the other day when I took objection to the absence of the Hon. Home Minister at the time of the consideration of this very important Bill, I had not the least intention of casting any reflection on the Hon. Minister who is moving the Bill now. It is a misfortune that in both cases the Hon. Mr. Madhava Menon piloted the Bills in the absence of the Minister actually in charge. I do say this; I gave three specific reasons: First of all, the

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Hon. Minister will be in a position to give such information as it is possible only for him to have in his possession, which will probably convince us. Secondly, I had intended to ask for a session in camera to discuss this Bill threadbare. Lastly and most important of all, the Hon. Home Minister must be aware of the suggestions that are put forward by hon. Members of this House so that he might be in a better position—whether this Bill is passed or not, I know it is going to be passed—to reflect calmly and to consider whether he should, in the discharge of his duties, in the administration of this Bill, bring forward or accept any amendments that he might feel necessary after having had the advantage of having the opinions expressed by his colleagues here.

“ If you will permit me, I shall give an example. When the Shop Assistants Bill was brought forward before this House, the Hon. Minister in charge then, the Hon. Sri Sitarama Reddi, moved it. In the course of the discussion of the Bill he stated that neither the Medical profession or the Legal profession would be included in the definition of Shop Assistants. At a later stage the Hon. Dr. Rajan, who was previously in charge of the Bill, said that the Legal and the Medical professions were included within the provisions of that Bill. The Hon. Minister who piloted the Bill in the absence of Hon. Dr. T. S. S. Rajan was fully ignorant of the intentions of the Bill. This instance proves the necessity of the Hon. Minister actually in charge of the Bill being present when the Bill is taken into consideration.

“ One word more and I shall finish. This House is always prepared to respond to the wishes of the Government with regard to the sittings of the House. We shall not, under any circumstances, withhold the privilege of the Government asking for an evening or a night sitting of this House for considering a very important Bill of this kind. The Home Minister is likely to come here this evening or to-morrow evening. No hon. Member of this House will object to the Government always asking for a sitting of this House in the evening from 5 to 8. I am sure the President of the Council will not in any way interfere with the wishes of the Government in such a matter.

“ I do not think it is fair, when we take exception to certain principles, that it should be suggested that we have an ulterior motive. I have no ulterior motive . . .

THE HON. SRI K. MADHAVA MENON :—“ I never attributed any motive at all.”

DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—“ I am anxious to give my best support to the Government when we are told that there is likely to be some trouble to the public. I wish to give every encouragement to the Government in the heavy task they have before them. That was the only reason why I stated that it was unfortunate that the Home Minister was not present here.”

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* DR. V. K. JOHN :—“ Sir, I am moving an amendment under Rule 106 of the Council Rules. Rule 105 says that the general provisions of the Bill may be discussed when the Bill is under consideration. Rule 106 says that any member may, if the Bill has not already been referred to a Select Committee of the Assembly or to a Joint Committee of both Chambers, move as an amendment that the Bill be referred to a Select Committee. If such a motion is carried the Bill shall be referred to a Select Committee and the rules regarding Select Committees on Bills originating in the Chamber shall then apply. This provision is intended by the Legislature to meet an occasion like this. In this Presidency at least, no emergency has arisen now. This Bill is a very important Bill. Although the provisions of this Bill have been copied from Acts passed by other Provinces, it touches the freedom of the person and the property of the individual. Therefore it should go before a Select Committee. No Select Committee of the Assembly or any joint Select Committee has considered this Bill. Therefore I move that a Select Committee be appointed, so that the Bill may be considered threadbare. The Home Minister also will be present when the Select Committee meets. The reasons why this Bill should be referred to a Select Committee have been mentioned by various hon. Members while discussing the general principles of the Bill. I heard my hon. Friend Dr. Lakshmanaswami Mudaliyar vehemently protesting against the Bill not being considered by a Select Committee. The rules give us an opportunity to move such an amendment. I hope the Government will not oppose this motion because nothing is lost by referring this Bill to a Select Committee and by discussing there the various provisions of the Bill. This House will have the benefit of this important Bill being considered by the Select Committee. During the course of discussion it has been mentioned that unimportant Bills had been referred to Select Committees and Joint Select Committees. This is a most important Bill that has ever come before the House and it should certainly be considered by a Select Committee. For some reason or other, this Bill was not referred to a Select Committee of the Assembly. We need not investigate the reasons. Rule 106 envisages such a situation. Otherwise such a rule need not have been enacted, there will be no opportunity for the application of this rule. This rule may be applied by the House at this stage. Otherwise, in my submission, this rule will be a dead letter. I cannot think of any objection on the part of the Government to refer this Bill to a Select Committee consisting of members of this House. With these words I move that the Bill be referred to a Select Committee.”

SRI B. NARAYANASWAMI NAYUDU :—“ Sir, I second the motion. The Government should not run. The Bill should not run. The Government is not going to come to a standstill because the Bill is referred to a Select Committee. This is a vital measure as my hon. Friend put it. It touches the freedom of the individual; it touches the life of the individual. This is a Public Safety Bill. This is not an ordinary and simple Bill as though we can run with

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it. It deserves every consideration and discussion at the hands of hon. Members; therefore it should be referred to a Select Committee. It is not a question of withholding support to the Government in such a necessary measure. But the question is what powers should be given and under what circumstances. There are certain other matters to be considered in connexion with this legislation. This Bill has far-reaching effects not only on the liberty but also on the life of an individual. Therefore it should be referred to a Select Committee."

* THE HON. SRI K. MADHAVA MENON :—" Sir, I rise to a point of order. Under Rule 90, notice of this motion should have been sent to the Secretary of the Council in writing three days before the sitting of the Council. Of course you, Sir, have the right to waive such notice. In this case no notice has been given to you beforehand. You have not been asked to waive notice. The hon. Member has not given you any notice at all and I submit that there is no amendment before the House to be considered."

* SRI R. SURYANARAYANA RAO :—" Sir, I am sorry that the Government is taking such an objection. The Hon. Mr. Madhava Menon while introducing the Bill, said that this Bill was published in November 1947. Till the other day they did not think it necessary to rush the Bill through both the Houses. There seems to be no hurry. It does not matter very much after all if the passage of the Bill is delayed by a few days. Sir Lakshmanaswami Mudaliyar stated that we are willing to sit in the nights if necessary. All that we want is that every consideration should be given to various points of view. If the Government do not agree to this motion, it means that they do not want to give reasonable opportunity to this House to consider this Bill carefully but to carry through the measure at any cost and that too immediately."

* DR. V. K. JOHN :—" Sir, I am surprised that the Hon. Minister should take objection on the ground that this motion has not been given notice of. After all, this Bill was discussed on Saturday and to-day is Monday; so '3 days' notice could not be given. Usually we find that Bills are rushed through this House after they are passed by the Assembly. Three days' notice could not be given in this case. The President always allows such motions. After the general discussion of the Bill I consider that my motion is necessary. There was general discussion of the Bill under rule 105. Only after the general discussion of the Bill, the necessity may rise for moving such a motion as mine. The House now considers that the Bill should not be rushed through. Under Rule 106 I move my amendment. Rule 90 does not actually apply to my amendment. It is in the discretion of the President to allow such an amendment to be moved. I ask you, Sir, to allow me to move this amendment. Such a permission can be given by you. The Hon. Minister says that no notice was given previously. After hearing the criticisms made by this side of the House I expected that the Hon. Minister might withdraw this Bill. We have given very valid reasons against clauses 5 and 6 of the Bill. The

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Hon. Minister does not agree with us. Therefore I am quite in order now to get up, after general discussion, and to move this amendment under Rule 106. It is in your discretion to grant me permission. My amendment can be moved at this stage and I request you to give me leave to move it. If the Government do not want to have a Select Committee to consider this Bill it is a different matter. They should not oppose my amendment on technical grounds. I am voicing the opinion of a large number of Members in this House. I deeply regret that the Hon. Minister gets up and puts forward a technical objection and not one on merits."

12-45 P.M. THE DEPUTY PRESIDENT:—"I think, that when an objection is raised, I must rule that this amendment is out of order because Dr. John has already spoken in the beginning and he has also given written amendments which are before the House. He has not given this amendment in time and at the end when the Chair is going to put the motion to the vote of the House, Dr. John springs this surprise on us. I rule that it is not within the rules for Dr. John now to move this amendment of which no notice has been given. Therefore, I think I must rule this amendment as out of order.

"Now, the motion before the House is that the Madras Suppression of Disturbances Bill, 1947, as passed by the Legislative Assembly be taken into consideration at once."

The motion was declared carried but was challenged. (The bells were rung.) The motion was once more put and declared carried. This being challenged, the House divided thus:—

Ayes.

- | | |
|----------------------------------|--------------------------------|
| 1 The Hon. Sri K. Madhava Menon. | 12 Sri T. Purushotham. |
| 2 The Hon. Dr. T. S. S. Rajan. | 13 " N. Ramabhadra Raju. |
| 3 Sri M. Narayana Menon. | 14 " A. Govindacharyulu. |
| 4 " B. Bhima Rao. | 15 " C. Perumalswami Reddiyar. |
| 5 " L. Subbarama Reddi. | 16 " M. K. Sundararama Iyer. |
| 6 " S. K. Satagopa Mudaliyar. | 17 " S. Jayaram Reddiar. |
| 7 " M. Narayana Rao. | 18 Mr. A. S. T. F. Rodrigues. |
| 8 " N. Sankara Reddi. | 19 Sri N. Ranga Reddi. |
| 9 " N. Venkatachalamaji. | 20 " P. R. K. Sarma. |
| 10 " C. N. Muthuranga Mudaliyar. | 21 " A. R. L. Pathy. |
| 11 " K. Natarajan. | 22 " C. Veerabhadra Rao. |

Noes.

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|---------------------------------------|--|
| 1 Dr. V. K. John. | 7 Dr. Sir A. Lakshman swamy Mudaliyar. |
| 2 Sri H. M. Jagannatham. | 8 Sri B. Narayanaswami Nayudu. |
| 3 " R. Suryanarayana Rao. | 9 Abdul Latif Ferozkhi Sahib Bahadur. |
| 4 Mrs. M. N. Clubwala. | 10 K. T. M. Ahmed Ibrahim Sahib. |
| 5 " M. Hensman. | 11 K. Uppi Sahib Bahadur. |
| 6 Sri M. D. T. Kumaraswami Mudaliyar. | |

Ayes 22, Noes 11.

The motion was carried.

SRI B. NARAYANASWAMI NAYUDU:—"Mr. Deputy President, I know there is no use of moving any amendments.

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I am not at all concerned with the result and my purpose is to bring to the notice of the House the serious import of the Bill and I am not going to relax from it any jot.

"I want the House to realize that this Bill is nothing short of Regulation II of 1804 enabling Government to introduce martial law. The main point is that you want to put people in terror by the fear of hanging, saying that if one disobeys the orders, he would be hanged. I undoubtedly consider that this sort of martial law is not at all necessary and should not find a place in the Statute Book. It is always understood that proclamation declaring martial law should be done on the basis of certain facts. The Disorders Enquiry Committee says that before a declaration is made it should be stated that certain things exist there; it may be a rebellion or the activities of the people indulging in smashing of communications, smashing of buildings and other things and it may be in connection with war. Then in the interests of the maintenance of peace in the country, having regard to the rebellion or disorders or the state of war, martial law is declared. Regarding the section I do not even see under what conditions an area may be declared as a disturbed area and nothing is stated here except that Government might by notification declare it to be such. I wish to state what occurred in the Punjab before the martial law days, though I know you are not going to carry it out. They appraised the Chief Justice of the High Court of the circumstances existing at the time and obtained his concurrence for the declaration of martial law. I do hope and wish that before you declare an area as a disturbed area, you have the sanction of the Chief Justice justifying to his satisfaction the action you propose to take. Member after member have said that one must be very careful about declaring specific areas as declared areas. Not only that, when the Police say that they cannot control the area and the Military Commander of the area feels like that, you can get the consent of the Chief Justice. It is in your own interests that I say you justify your action to the satisfaction of the Chief Justice. This is what happened in the Punjab, the Lieut. Governor of the Punjab apprised the Chief Justice of the position obtaining in the country and obtained his consent. It is regrettable to note that nothing definite has been stated in the Bill. When my hon. Friend wants to suggest labour troubles or communal troubles or internal dissensions, the Hon. Minister did not controvert. Will you justify the awarding of death sentences in these cases? I say there must be something specific and some good and valid reason for it; they may not divulge it to us but all the same they must have it. You also get the consent of the Area Commander because you will find the civil officers unable to cope with the situation and again and again military help will have to be taken. I suggest this in the interests of Government themselves though I do not believe they will accept it."

* DR. V. K. JOHN :—"It is clear after the speech of the Hon. Minister that some such safeguards, as have been mentioned by the hon. Member who just spoke before me, are required. The

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Hon. Minister said that an area may be declared as disturbed area not only on account of communal troubles but also on account of labour problems such as the one which we are having at Coimbatore. Sir, if that is the idea of the Government, this House would ask for safeguards against Government acting arbitrarily. I support the suggestion made by the hon. Member Mr. Narayanaswami Nayudu that the Chief Justice must also concur in declaring an area as disturbed area."

THE HON. SRI K. MADHAVA MENON :—" There is no amendment before the House. It is only a suggestion by the hon. Member Mr. Narayanaswami Nayudu that in declaring an area as disturbed area there must be certain facts to do so. I agree with him that there must be certain facts before us, before we declare an area as disturbed area. There is no difference of opinion. Mr. Narayanaswami Nayudu is giving the suggestion that 'before we declare an area as disturbed area, you take the best advice and possibly the Chief Justice is the best advice.' His advice will certainly be borne in mind. There is no amendment before the House and this is an administrative matter and there is nothing to be answered."

Clauses 2 and 3 were put and carried.

Clause 1.

SRI B. NARAYANASWAMI NAYUDU :—" Mr. Deputy President, I move—

*At the end of sub-clause (1), the following shall be added :—
" if for reasons recorded in writing the Court shall find that death sentence is the only proper punishment to be awarded in the circumstances ".*

Under the martial law, the only penalty is death. Here with regard to murder, arson, mischief by fire, Government want to substitute the penalty of death. My amendment merely suggests that the reasons for awarding the sentence must be recorded in writing, showing that that is the only proper sentence to be awarded in the circumstances. As a matter of fact, Government themselves after the disorders commuted death sentences into transportation for life. I think that there must be this salutary safeguard so that the accused persons may not be in terror. Terrorising may be necessary in certain circumstances but here it is not at all necessary and it should be exercised in the last resort; if the judge feels that it is necessary, what all is required, is that he must record his reasons and give the sentence. I have no doubt of the answer I would have and it would not take long for me to see what kind of answer it will be."

DR. V. K. JOHN :—" I have only to add that when a serious punishment like death is provided for, it is only in order to provide that good reasons must be given if this penalty is imposed on him."

1 p.m.

THE HON. SRI K. MADHAVA MENON :—" I do not see why the implicit faith which Dr. John and others have in our

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judges should suddenly disappear in this case. I have greater faith in the judges because I have yet to read a judgment in a case in which death penalty is one of the penalties in respect of the offence where he has not given reasons for giving a lesser sentence on the basis of mitigating circumstance which should allow or enable him to give a lesser sentence. Mr. Narayanaswami Nayudu said that two sentences are provided for an offence under the ordinary criminal law. There is not much difference here also. This is only an alternative punishment that is provided for in this case. We say that in cases of abetment of, or attempted murder, loot, arson, etc., the alternative punishment of death may also be given. The law as it stands provides that the judge must give his reason why he is giving the lesser sentence when there are alternative punishments provided under the law; but Mr. Narayanaswami Nayudu wants the converse of it to be done. No Sessions Judge has till now not discussed the quantum of punishment, why he should give the lesser of the two sentences. I challenge Mr. Narayanaswami Nayudu who had been a very renowned Public Prosecutor, to tell me of one judge who has not discussed while awarding the sentence, mitigating circumstances for giving the lesser of the two sentences. Every judge will do it. This is only a measure of abundant caution which my friend wants. That is the very thing which every judge does. There is only one case according to the Indian Penal Code where there is no alternative punishment except death. That is in the case of a person undergoing a sentence of transportation committing murder. The only punishment provided is death. In certain cases under the Martial Law, death is the only punishment and judges have no option. But in this case the judges have the option to award any of the two alternative punishments. And if the judge thinks, having regard to the particular circumstances of the case, that death sentence should be given, he might give the death sentence. Thus, there is no necessity for the amendment."

SRI B. NARAYANASWAMI NAYUDU:—"I am sorry, Mr. Deputy President, that the Hon. Minister seems to flout the resolution passed at the Lawyers' Conference at Masulipatam that when death sentence is given the judges should give reasons. When a judge gives a sentence, he wants to discuss the question of punishment because there is no stay power with him; he must award the death sentence if there are no extenuating circumstances in favour of the accused person. Otherwise the High Court will step in and say that death punishment must be given. You will have to realize that the punishment for these offences under the ordinary law is only transportation for life or imprisonment for seven years. Death sentence should only come in as a last resort and that for definite reasons which I say must be recorded in writing. I am very sorry that the Hon. Minister thinks that I am suggesting the reverse of what obtains now. In the one case the Sessions Judge gives the reason for awarding the lesser sentence, so that the High Court may not find fault with him. I want that reasons should be recorded for awarding death sentence because the lawyers' conference has put forward that suggestion and because under the ordinary law, lesser sentences are prescribed for such offences."

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THE DEPUTY PRESIDENT :—“ Because in clause 4 (1) you want to substitute ‘ transportation for life ’ for ‘ death ’ which is a lesser punishment, I would like to put that first before the other. I suggest to Sri Suryanarayana Rao to move his amendment.”

SRI R. SURYANARAYANA RAO :—“ I move—

‘ that in clause 4 (1) for the words “ with death ” the words “ with transportation for life ” shall be substituted.’

These are offences mentioned in this clause, I am told, for which the punishment prescribed is transportation for life. My main objection to the provision of death sentence is that I am one of those who are against capital punishment. I drew the attention of the Government to this question by an interpellation and I was told the Government had decided not to abolish capital punishment.

“ My objection to death sentence, Sir, has been strengthened by a very plausible excuse given by the Hon’ble Minister Mr. Madhava Menon when he said that to prevent persons guilty of dacoity from making use of the spoils, the best method is to put him to death. I was surprised that such an argument should have been put forward by a member of Government. I noted down his remarks and followed his reasoning carefully because I was anxious to know why the Government thought of putting death as a punishment for all the sections and I find one of the plausible excuses given is to prevent persons guilty of dacoity from making use of the spoils or the looted property. That is not, I am sure, a serious argument to be put forward by the Government. Is not transportation for life sufficient punishment? Is not the tendency of all penal reforms is to enable a person guilty of crimes to repent at leisure and become a better man? Will not transportation for life enable him to do that? That is the main argument I urge in favour of my amendment. As I said, I am totally against capital punishment and even for murder in a large number of countries, death sentence has been abolished. Even in the Netherlands, Switzerland, Belgium, Denmark, Norway, Sweden, Finland, Union of Socialist Soviet Republic, Rumania, Hungary and so many other countries, it is the same case. I thought now we have got independence and popular governments are functioning, they would see the absurdity of having capital punishment on the statute book. They may not sympathize wholly with the idea but they even seem to have out-Heroded Herod by providing death sentences even in respect of offences for which there is no such provision under the ordinary penal law. With these few words, I move my amendment.”

SRI H. M. JAGANNATHAM :—“ I second it.”

SRI R. SURYANARAYANA RAO :—“ The second amendment is to clause 4 (2). Even for abetment, discretion is given to the court to punish the offender with death. Not only the actual offender who commits the offence but also those who attempt to commit or abet the commission of any offences punishable under sub-section (1) are to be liable to death sentences. There are more

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extenuating circumstances in the case of abettors and they deserve to be treated with more leniency than actual persons who commit offences. Therefore, I move—

that the words " with death or " shall be omitted.

SRI N. RANGA REDDI :—" Sir, I rise to oppose the amendment of Mr. Narayanaswami Nayudu. It was argued that capital punishment has been abolished in several other countries and there is no reason why it should remain in our statute book. Now it is absolutely necessary when we are dealing with a particular kind of situation that capital punishment should be there. It should not be forgotten that we are now legislating to deal with a disturbed area and to terrorize people not to commit offences it is quite essential such a provision should be there." 1-15 p.m.

THE HON. SRI K. MADHAVA MENON :—" Sir, I have nothing to say to the remarks of Mr. Ranga Reddi. With regard to the contentions of other hon. Members I may tell them that we are now legislating not to meet any ordinary conditions of society. We are now legislating to meet a disturbed area, and it is with reference to that I said that provisions are necessary to prevent a person guilty of dacoity to make use of his spoils. The alternative punishment for death, namely, transportation for life, is already there in the penal code, in sections 307, 363, 364, 365, 366, 367, 368, 376, 392, 394, 395, 397, 398 and 436. So that takes away the force of the argument of hon. Members opposite. Therefore Government do not accept the amendments proposed."

Sri R. Suryanarayana Rao's amendment was put and lost.

Sri B. Narayanaswami Nayudu's amendment was put and lost.

Sri R. Suryanarayana Rao's amendment to omit the words " with death or " in clause 4 (2) was put and lost.

Clause 4 was put and carried.

Clause *5.

SRI B. NARAYANASWAMI NAYUDU :—" Sir, I move—

that after the words " Any magistrate " in the first sentence the words " having territorial jurisdiction and of the rank of a second-class magistrate " shall be inserted.

Sir, till now we have been discussing with a terrorizing section; and now we are discussing with assassination of persons in a state or martial law. Now I will read a quotation from the Riot Inquiry in Burma at page 229, which will show the danger of entrusting such wide powers to the police officers.

' We observe that resort to powers of private defence must in law always be a hazardous proceeding for a simple police officer, particularly in defending property, because in our view, the mastery of section 103 of the Penal Code requires no inconsiderable power

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of memory and legal understanding. What we desire to make clear is that from these two sources are derived all the police officers' powers of using "force" in civil rioting.

"Now, Sir, the clause gives powers to the police officer to fire upon an assembly if in his opinion it is necessary so to do for restoring or maintaining public order. It is this which was done by General Dyer in Jallianwalla Bagh. In the course of inquiry he openly said that he opened fire not for dispersing the crowd but for teaching a lesson in the Punjab. That was his justification for his act. Now, in this measure you are doing a similar thing. You are permitting the police officer to open fire if it is necessary in his opinion to restore order. Clause 5 is the central provision of martial law. Five or more persons should not assemble. No person should carry with him any weapon and pass along the streets. Even if it be a stick it should not be carried, because it is capable of being used as a weapon. If such a thing is done the officer should give a warning and if it is not heeded he can open fire, and Government are not to question him for his conduct. In this connexion I will read to the House an extract from the Minority Report of the Punjab Disturbances Inquiry Committee, at page 186, which will show what will happen if martial law legislation is passed. General Dyer had issued a proclamation banning any procession or the holding of any assembly. After he received the information about the contemplated meeting he had four hours to think before he started to go to Jallianwalla, he took half an hour to reach there and he arrived there with his mind already made up as to the action he was going to take. His action was in accordance with a determined resolution that he had deliberately arrived at. It was no longer a question of dispersing the crowd but one of producing a sufficient moral effect, from a military point of view, not only on those who were present, but more especially throughout the Punjab. There could be no question of undue severity. It says:

Q.—'I gather generally from what you put in your report that your idea in taking this action was really to strike terror? That is what you say. It was no longer a question of dispersing the crowd but one of producing a sufficient moral effect.'

A.—'If they disobeyed my orders it showed that there was complete defiance of law, that there was something much more serious behind it than I imagined, that therefore these were rebels, and I must not treat them with gloves on. They had come to fight if they defied me, and I was going to give them a lesson.'

"Sir, this shows what will happen if this Bill were to be passed. So, Sir, I ask, is it not Dyerism that is sought to be repeated here? There is no use saying Bombay Government have done this and that Bengal Government have done this. The inspiration should come from ourselves. You are giving extraordinary powers to the police force and it may be used to-day against labour trouble, tomorrow against communal trouble, and who knows it may be used on the third day against the Justice party organization? Who knows the police officer may open fire not to enforce an order but what he thinks to be to create an atmosphere of peace. I ask: what is the

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object in giving power to shoot down a man when there is no mob at all. When there is no mob and when there is only a single person, cannot the armed police force overpower him and take him to the police station instead of shooting him to death? In times of war, I can understand such action against people who go near works of defence and communications, as it may be said that they may tamper with communications and so on. I am really surprised at the power to shoot down a man in a disturbed area to death. I do not think that the seriousness has been realized when the Bill was drafted, and it has been placed before this House merely for passing. The least that can be said is that there is absolutely no justification for our legally enacting Dyerism. There at least you have got a proclamation that five persons should not meet. Here there is no such thing. Section 127 of the Criminal Procedure Code says: 'for the purpose of dispersing a mob.' But here you can shoot not for the purpose of dispersing a mob, but for restoring or maintaining public order. Dyer said: 'I know that shooting without warning is disastrous. I did not want to warn, so that the people hereafter at least may not disobey the order.' Is it for that purpose, for the purpose of striking terror in the hearts of the people, that you want this power or is it for maintaining public order? I submit that it is not right for a civil Government to take such a power. In Burma there was trouble between Indians and Burmans, and riots took place. Did the Government of Burma pass an Act like this? This Bill is a negation of fundamental rights. You have taken away the liberty of the individual under the Public Safety Act. Not satisfied with that, you want to give power to an officer not below the rank of a Sub-Inspector to shoot a man to death. I say it would be disastrous. If a man walks in the street with a gun, can you not snatch it away from him instead of shooting him to death? Certainly I cannot be a party to passing a Bill of this kind. I hope the hon. Members of this House will see that at least in future a Bill of this kind is scrapped and not pushed through."

The House adjourned for lunch.

(After lunch—2-30 p.m.)

SRI C. N. MUTHURANGA MUDALIYAR:—"Sir, it seems to me that we are under some misapprehension and are thinking of the old days when the British Bureaucracy was keeping us down. This Bill, Sir, has been brought forward by responsible Ministers to meet unforeseen circumstances and dangerous situations. We know the situation in northern India, the situation in Hyderabad and the situation created by the activities of the Rashtreeva Svavam Sevak and similar other organizations in our midst. My hon. Friend Mr. Narayanaswami Naidu is thinking of Dyers and O'Dwyers and the Jalianwallabagh massacres. Yes, Sir, it is true. Our country has been fighting the foreign bureaucracy all these days and has achieved freedom now. The foreign bureaucrats like Dyers and O'Dwyers are not responsible men to the people of this country.

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They are responsible to their masters in England, and they were carrying out the orders of their masters and hence those perpetrations

" Now, Sir, our Ministers are responsible men, who are responsible to this House and to our country. No doubt there is an apprehension in certain quarters that our police officers are not always responsible people and that they may misuse the powers entrusted to them. Even though some of them may not be responsible, and are likely to misuse the powers, yet our Ministers are responsible men and they will be responsible for the actions of the police. We must not also forget that the police of the present day is not the police of the bureaucratic days, although the personnel may be the same here and there, and they are expected to carry out the orders of our popular Government. So, they too may be expected to become more responsible and discharge the duties entrusted to them to the satisfaction of the public. That is the manner in which we have to view the police and their actions hereafter. If we go on finding out loopholes and always criticizing the Government, then nothing can be done in this country, and no order or safety can be evolved out of the chaos now existing in our midst.

" Sir, our friends of the Opposition must realize that they are also a part of the Government. They should not think that the Ministers are always their opponents. They may also hope to occupy the Treasury Benches one day or other, though not immediately, as my hon. Friend Mr. Abdul Farookhi Sahib threatened us this morning, at least after the Constituent Assembly has enacted the new Constitution for this country and fresh elections are held. Until that time, they will have to wait. If they succeed in the elections, they are, of course, bound to take office and then, I am sure, they will also have to pass legislation in the same manner as our present Ministers are doing, and they will also be liable to commit mistakes. To err is human, and our Ministers are also liable to commit mistakes, but they can be rectified at a future date, if they are found to be really mistakes. So, our present Opposition Members, who mostly happen to be nominated members, may hope to become elected members of this House one day and may become occupants of the Treasury Bench and exercise the powers of the Government. They must therefore realize that position and moderate their opposition and criticisms according to that sentiment.

" Sir, section 5 of the Bill is apprehended to be a very serious section and when occasion arises, it will have to be used. I see from the papers that the Hon. Home Minister has given an assurance in the other House that it will be only on the statute book, and that there will be no occasion to use it. I don't think so. If intriguing situations arise in the future, it will certainly have to be used. It would not be a dead letter in the statute book, when such occasion arises and with that consciousness, I support the clause."

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SRI R. SURYANARAYANA RAO :—“ Sir, in addition to seconding the amendment of Mr. B. Narayanaswami Naidu, I should also like to move my amendments to clause 5, which are as follows :—

- (1) *In line 2, for the word ‘ his,’ the word ‘ their ’ shall be substituted.*
- (2) *In line 4, for the word ‘ such,’ the word ‘ due ’ shall be substituted.*
- (3) *In line 4, the words ‘ if any, as he may consider necessary’ shall be omitted.*
- (4) *In line 5, the words ‘ even to the causing of death ’ shall be omitted.*

“ Sir, my first amendment is that the word ‘ their ’ is to be substituted for the words ‘ his ’ in line 2. The clause, as you notice, reads thus—‘ Any Magistrate, and Police officer not below the rank of Head Constable, may if, in his opinion, etc. ’ I feel, Sir, that the words should be ‘ in their opinion ’ and not ‘ in his opinion ’, so that if both of them agree that to maintain public order, firing should be resorted to, they may jointly take the responsibility for issuing such order. I think that grammatically also my suggestion is correct. That is only a small amendment.

“ Then the next amendment is one in which I have adopted the language that is given in the Statement of Objects and Reasons. In the Statement of Objects and Reasons to the Bill as introduced in the Assembly, the following sentence occurs :—

‘ Magistrates and Police Officers, not below the rank of Head Constable, have also been empowered, after giving due warning, to fire upon or use force against persons contravening any law or order prohibiting unlawful assemblies or the carrying of arms ’.

I have asked for the substitution of the word ‘ due ’ for the word ‘ such ’ occurring in the clause as it stands, and my amendment, if accepted, will be in consonance with what is stated in the Statement of Objects and Reasons.

“ Then Sir, my third amendment is for the omission of the words, ‘ if any, as he may consider necessary. ’ I feel that it is necessary, before an order for firing is given, that a warning should be given and it should not be left to the discretion of the officer to give such a warning or not. Sir, in this connexion, I would invite the attention of the Hon. Minister to the police orders where these words are already been used, namely, ‘ after giving full warning, etc. ’ and I am only adopting that phraseology. My object is that he should give full warning and the discretion to give a warning or not, is not to be vested in the officer who is to issue orders for firing.

“ Then Sir, my last amendment to clause 5 is in line 5, I want to omit the words ‘ even to the causing of death ’. I understand that policemen know no restriction as regards the effect on such firing and I therefore submit that it should not be laid down in the Act that ‘ firing even to the causing of death ’ will be

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permitted. I cannot understand why the Government have felt it necessary to draw specific attention to this effect and made use of these words "even to the causing of death" in the Act. If firing is resorted to, it is but natural that death may be caused, and it is resorted to simply to scare away the crowd. I understand further, that no firing authority gives instruction to the policeman that he should shoot in a particular manner, not to cause death. So, Sir, my emphasising this fact, namely, 'the causing of death', you practically give the officer issuing the order to fire, a blank cheque, that he need not care for life and that he is at liberty to do whatever he likes, provided he achieves his purpose. After all, Sir, the purpose to be achieved is to disburse an unlawful assembly or to prevent an unlawful assembly from committing acts of arson, looting and burning of properties and so on. This purpose will be achieved, if the officer concerned is simply made to understand that he need not go to the extent of causing death, if it is possible for him to achieve this purpose otherwise. Why Government should have laid so much emphasis on these words, I cannot understand. I do not think these words are necessary for the purpose. They can be left out. In fact, Sir, I feel that the whole of clause 5 is unnecessary, because the Police Orders already contain complete instructions how and under what circumstances firing should be resorted to to disburse an unlawful assembly and almost all the police officers are aware of them. Unless it be that the Government are anxious, as my hon. Friend Mr. Narayanaswami Naidu pointed out, that any person who in a disturbed area is found to be acting in contravention of any law, even though he does not form an unlawful assembly, should be dealt with, as if he forms an unlawful assembly, there is no need for these words.

2-45
p.m.

"I do not think that is the intention of the Government. The intention of the Government is to see that law and order is maintained, that no unlawful assembly commits acts of violence calculated to cause destruction of property or lives and to prevent persons from exercising rights which they would be entitled to exercise but for the prohibition of assembly or the use of weapons mentioned in this clause. However the sting of this section will be greatly removed if my small amendments are accepted. I am particularly anxious that the word 'due' should be inserted in the place of 'such' and that the words 'if any, as he may consider necessary' should be omitted. By doing so, we would legalise the present position as envisaged by the Police Manual, namely, 'after giving due warning to fire upon or otherwise use force', without giving any discretion to the authority issuing the firing order to give or not to give the warning. It is with this object that I have given notice of these amendments and I would request the Government to accept the amendments as I have used only the wording that they themselves have used in the Statement of Objects and Reasons. This is the sentence that occurs in the Statement of Objects and Reasons: 'Magistrate and Police Officers, not below the rank of. . . have also been empowered, after giving due warning. . . .' It is presumed from this that any magistrate or police officer who issues an order for firing can do so only after giving due warning. Evidently the Government have

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rightly thought what their officer should do before he issues an order for firing. But somehow in the wording of the section these ideas have been lost sight of. With these words, Sir, I move my amendments."

SRI M. D. KUMARASWAMI MUDALIYAR :—" I second the amendments, Sir."

* DR. V. K. JOHN :—Sir, as I said in the beginning, while we are anxious to support the Government wherever possible in measures to maintain public order and safety in this Province—and that feeling is shared by every Member on this side of the House—we have to bring to the notice of the Government the fact that in blindly following some precedents in other provinces they are committing a very serious error. Sir, this piece of legislation, particularly clause 5, I should call a lawless law, worse than Martial law. Sir, let us visualise a situation which the Government might have to face. We might expect disturbances out of Communalism or Communism out of labour troubles or even out of disruptive forces that are now gathering on account the agitation for linguistic provinces. Suppose on account of any of these causes there is a commotion in Madras and a rioting takes place, the Government might then have to put into operation this Act if this Bill is passed into law, as my friends expect that this Bill will be passed into law. Sir, I might take this opportunity to mention a matter which I have mentioned once or twice before. In all matters where the confidence in the Government is involved let all the Congress Members of this House be behind the Government and vote for the Government measures. But in very serious measures like this why should not they have the freedom of voting? I am sure that if only Members on the other side of the House and on this side, who belong to the Congress Party, are only given the freedom to vote on this Bill in accordance with their conscience, then surely this Bill would never be passed. It might not have passed the Assembly and I am quite sure that this will not pass this Council. But I have seen that many Members on the other side supporting the Government, have spoken against this Bill, particularly clause 5, but when the voting comes they are governed by discipline and they have to vote for it. I say that it is but proper for a Government having such a huge majority behind them to see that ordinarily measures are brought before the House and left to the free will vote of the Congress Members and not to the vote as ordered by the Party. If that were so, it would also save their conscience and at times it will also save the public. In this matter it would have saved the public because the Government do not know their own mind. They are only concerned with following precedents. People creating commotion among communities are also following precedents. They also say, in the West Punjab it so happened, in the East Punjab it so happened and in Delhi it so happened. Let it happen here also. They have got precedent for it. People who have to frame legislation, also follow precedents. Many of our best men, including my hon. Friends sitting on the other side of the House have been put into jail by applying legislation passed by a foreign

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Government. We have precedents for everything. Sir the Government have no mind of their own. The Government should not go on precedent but on merits and apply their minds. I hope the Hon. Minister when replying to the debate will not rely so much on precedents as on the merits of this case. If only the Government had made a provision in clause 5 that the officers who would be authorized by the Government from time to time would be entitled to open fire it would have been a great thing. Now, Sir, the executive Government cannot overrule the enactment. This Bill if passed into law would at once invest every Police Inspector in an area declared to be a disturbed area with the power to shoot down anybody who in his opinion ought to be shot down. Why should we give such a power to a Police Inspector? Why should not the Government reserve the power to entrust certain officers whom they know to be incorruptible and are not corrupt and who, they know, will act wisely within their disturbed area, with the power to shoot. As it is they give every Sub-Inspector the power to order shooting. Sir, I am not one of those who criticise the Police unnecessarily; but surely there are Sub-Inspectors and Sub-Inspectors and at least one per cent of them may be persons who might have some spite and who might order firing so that the shot might go into the body of a person or persons whom, on account of their spite, they may not like. Sir, the Government are depriving themselves of their power by asking the Legislature to give the power to the Police Inspector. I want the Hon. Minister to understand the position. I should have been very satisfied if this Government took the power to empower certain named officials in a disturbed area to exercise this power which I say is far beyond even the powers under a martial law regime. Instead of doing that the Government are giving away their power and we are asked to pass a legislation to give that uncontrolled power to a Sub-Inspector. I say 'uncontrolled' because the word used is: 'as he may consider necessary.' Therefore the only control on a Sub-Inspector is himself. 'His own consideration' is his guide. Nobody else can control him. The Hon. the Minister while speaking before said: 'We do not understand the purport of (the amendment to) clause 5 as the order has first to be passed prohibiting the assembly of five or more persons or the carrying of weapons.' It is elementary and the Hon. the Minister must know that it is elementary that in a disturbed area the first thing to be done is for the Magistrate to pass an order prohibiting the assembly of five or more persons and the carrying of weapons. That order will automatically come in as soon as you declare an area to be a disturbed area. Therefore, to wax eloquent and make it a very big condition for a Sub-Inspector to order shooting is I venture to submit of no consequence whatever. If you visualize, what will happen is that, when Madras is declared to be a disturbed area, then an order will be passed prohibiting the assembly of five or more persons and prohibiting the carrying of weapons. All that will come in quick succession. Then what is the position? Every magistrate is allowed to exercise his judgment. It may be said that a Magistrate by his training is in a position to exercise judgment which is detached and in exercising

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his judgment he may order shooting. But the Bill does not stop there. The Bill does not say that such officers whom the Government may empower from time to time might also have the power to order shooting. But it extends the power of ordering shooting to every Sub-Inspector. I say that the Government are depriving themselves by introducing this Bill and asking the majority behind them to pass it, of a power which they could very well have reserved in their own hands and not invested it in the hand of every Sub-Inspector in a disturbed area to use it as he pleases. They could have at least said that such and such Sub-Inspectors would have the power. Now that they give the power to every Sub-Inspector what would happen, when there is a disturbance out of communal tension. I am hoping that it will not happen in our Presidency and we may not have to follow precedents from other Provinces where there is communal rioting going on. Now, Sir, if there is a communal riot, you have armed every Sub-Inspector, Muslims, Hindus and people of other communities also, with the power to order shooting, and there is no control over them, except his own judgment and his own desire, the Muslim Sub-Inspector will shoot a Hindu Sub-Inspector because in his opinion the Hindu Sub-Inspector is a person whom he considers is a person should be fired upon, because it is a communal rioting. Sir, I am not exaggerating. We have heard that in the Northern India, in the West Punjab, in the East Punjab and other places Government servants took sides with the mobs. Therefore to give this power to Sub-Inspectors and to every Sub-Inspector in a disturbed area is to ask each Sub-Inspector to shoot the Magistrate or Sub-Inspector belonging to a community other than his own.

“ This is a thoughtless legislation, and this is going to be 3 p. n.
 passed. Hereafter, some other province can say that Madras is a sane Province, and Madras has passed this legislation. Let us not give any precedent. A Government, in my opinion, ought to reserve power to themselves and ought not to deprive themselves of the power to name the persons who can order the shooting down of men. This is my point. Government do not want to reserve that power to name the persons within a disturbed area who will be entrusted with this power over life and death. But they leave the matter to the Sub-Inspector of Police to decide solely on his own judgment. Sir, he may even disobey a Magistrate, if he is a clever man, and say ‘ if I consider it necessary I can shoot down a man ’. He may say, ‘ if I consider it necessary, I can shoot down a man who carries a weapon with him ’. Government are, without any consideration, without any judgment, and without any forethought, depriving themselves of the power and are investing this power to shoot down men on Sub-Inspectors of Police. I was quite surprised to see that a member of the Government should get up and say that after the 15th August 1947, every Sub-Inspector has been changed over to the standard of an Angel, and that he will never shoot a man unnecessarily. I ask why give away that power? Why should I and my hon. Friends be asked to be a party to a legislation by which Government deprive themselves of the power to shoot

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down men, and allow every Sub-Inspector of Police to shoot any person, 'if in his opinion it is necessary so to do.' It is possible that another Sub-Inspector of Police walks into a disturbed area and orders the opening of fire there, because it is not stated that only the Sub-Inspector of Police or the Magistrate who has jurisdiction over the disturbed area can order the shooting. Sir, this is a thoughtless and lawless legislation introduced in this House, and we are asked to be a party to the investing a Sub-Inspector of Police the power to shoot down people, when he considers it necessary to do so. I oppose with all the strength at my command this investing of power on a Police Sub-Inspector. I, therefore, Sir, move an amendment which stands in my name, that is, in Clause 5 the words 'and any police officer not below the rank of Sub-Inspector' shall be omitted. In moving this amendment, I again repeat my suggestion that Government have forgotten to reserve power to themselves. When the legislature gives power to a Police Sub-Inspector, Government cannot afterwards deprive him of that power. Let them know that, because the Legislature in a democratic form of Government is supreme. When the Legislature gives that power, even Government can not say 'you shall not exercise that power', because the enactment passed by the Legislature should be obeyed even by Government. Therefore, Sir, I am making a suggestion to the Government to omit these words, and reserve the power to empower certain specified officers to order the opening of fire. They may be Magistrates, Inspectors, or Tahsildars, or anybody, whom Government can get hold of in a disturbed area. Why should not Government do that? First, they have to declare an area as a disturbed area. Then orders will be passed prohibiting the assembly of five or more persons or the carrying of weapon, etc.. Why cannot that Government simultaneously say that the persons named in the order have been empowered to open fire? After all the Government know the senior officers in the locality, their precedents and their abilities. We can trust a popular Government. I can trust my Hon. Ministers on the other side. What I say is they are depriving themselves of this power, and invest it on a Police Sub-Inspector to decide on the life or death of his fellow subjects. Sir, as everybody knows, in communal riots, a Police Sub-Inspector, if he is a Hindu, will be on the Hindu side, and if he be a Muslim, he will be on the Muslim side. Therefore, envisaging the circumstances which might arise in a disturbed area, let us not pass any enactment under which unlimited powers are vested on Sub-Inspectors of Police to shoot down people. Sir, I do not think the members of the Government have ever thought over the fact that a Sub-Inspector of Police can tell Government 'I would not obey your order; you cannot go against me'. Do Government realise that they are depriving themselves of power? Sir, when we criticise Government in this matter, we are not criticising them with a view either to oppose Government for opposition's sake or to discredit the Government. We are criticising them only in their own interests and in public interests. I hope Government will at least consider bringing in an amending Bill, if they want to have this

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Bill passed now, because it has already been passed by the Assembly—whereby they can reserve the power to themselves to name the officers who will be invested with the powers of deciding the life or death of the members of the public."

SRI H. M. JAGANNATHAM :—" I second the amendment, Sir."

SRI M. NARAYANA MENON :—" Sir, I oppose the amendments. These amendments can be divided into two classes, one relating to grammar and the other relating to merits. With regard to the amendment relating to grammar, I wish to say this. In Clause 5, it is said 'any magistrate, and any police officer not below the rank of Sub-Inspector, may if, in his opinion, it is necessary so to do . . .'. The objection is that the word 'his' cannot stand. I say it would certainly be better if the words 'any Magistrate or any police officer not below the rank of Sub-Inspector may if, in his opinion, it is necessary so to do . . . have been put. (Dr. V. K. John : why not 'and/or'.) Instead of 'and' you may have 'or'. But, as it stands, it cannot be said to be wrong, because if you read it in the following manner, it will be clear what the object of the Legislature is. By using the word 'his', the Legislature means a Magistrate's order or a police officer's order and not a combined order of the Magistrate and police officer. If it is stated 'any Magistrate, if, in his opinion, it is necessary so to do' and 'any police officer not below the rank of Sub-Inspector if, in his opinion, etc.,' it will be good grammar. Combining the two, the sentence may run as 'any Magistrate and any police officer not below the rank of Sub-Inspector may if, in his opinion, it is necessary so to do for restoring or maintaining public order . . .'. Then, it only means that it is an order by a Magistrate or by a police officer. There is nothing wrong in allowing this 'his' to stand. (Dr. V. K. John : 'That is a different opinion.') It is not stated anywhere that it will be a combined order. Therefore, the word 'their' need not be substituted for 'his'.

" Then, Sir, about the amendment to substitute the word 'due' for 'such' and the amendment to delete the words 'if any, as he may consider necessary'. The substantial point made out here is that under no circumstances shall a Magistrate or a police officer be given any power to order the opening of fire unless he gives a warning, that is, a warning must always be given, and then only the order to open fire can be given. This is the substance of the amendments, Sir. There may be cases, Sir, in which there may not be much time—or it may even be inopportune—to give any warning. It may be that order to open fire has to be given immediately to avoid some serious calamity. Under such circumstances, a police officer must have the discretion to order the opening of fire without giving any warning. It may not be always possible to give a warning. Therefore, it is that the words 'such warning, if any, as he may consider necessary' are introduced in the Bill. But in considering the amendment, we

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have to look into the background. The Government, before declaring an area as a disturbed area, is expected to weigh well the circumstances and then only declare it as a disturbed area. Cabinet Ministers will not simply say an area is a disturbed area. There will be reasons for it. They will certainly consider them. We will have to rely upon Government. When they declare an area to be a disturbed area, we must assume that there are good reasons for declaring so. One member asked how can you define a disturbed area. You can never define a disturbed area. Disturbances are not ordinary events. Government will review the condition in an area and when they say that it is a disturbed area, it follows they have considered the matter well. But in times like this, I say it is necessary that there should be a legislation like this. In a disturbed area, a single individual can create any amount of disturbance, keeping behind the other persons. That person will have to be dealt with immediately if the other persons behind the scene are to be brought to book. To provide for all those contingencies, it is provided 'after giving such warning, if any, as he may consider necessary'. This will cover all the cases I have mentioned.

"Then, Sir, about the amendment to omit the word 'such' and substitute 'due', in its place. The words are 'after giving such warning, if any, as he may consider necessary'. That is to say, he will weigh all the circumstances and come to a decision whether any warning is to be given and if so, what sort of warning. That constitutes 'due' warning. If the word 'due' should mean anything else for instance so much time, it will not be possible for any officer, however high he may be, in a disturbed area to come to a conclusion what is meant by the word 'due'. Whatever warning he considers necessary he will give. It may be in some cases he gives no warning at all. Therefore it is said 'after giving such warning, if any, as he may consider necessary'. I see no harm in allowing the word 'such' to stand.

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p.m.

"Then, Sir, another amendment is to omit the words 'even to the causing of death.' I am surprised to hear the argument that a police officer must always shoot so that death may not be caused. It is very difficult and it is almost impossible, because if a man is fired upon, it may hit him in the leg or it may hit on the head. If it hits in the leg, he may not die; but if it hits on his head, he may die. Therefore, if those words are omitted, then the police officer may not fire at all. He may hesitate to fire or probably will not fire because if it causes death, he may get some punishment. Therefore, the argument that the Police officer may open fire but should not cause death is not imaginable. So, the words as contained in the Bill, viz., fire upon, or otherwise use force, even to the causing of death are used. Everything is there. The police officer may use sufficient force so that the offender may not be killed at once; he may fire upon him but need not necessarily kill him and the last stage that he may fire upon him or use force even to the causing of death. All these gradations are there and therefore, I oppose the amendments."

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DR. V. K. JOHN :—" Did the hon. Member draft this clause? "

SRI M. NARAYANA MENON :—" Then, Sir, the clause says : ' against any person who is in a disturbed area in acting in contravention of any law or order for the time being in force in such area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons.' I may submit to the House that these things need not all be there. But I may also state that I agree with the opinions expressed by the Opposition members that the Government should be very careful in using this provision, I am sure a popular Government will always be careful. They are not here to put many persons to death. They are here to save many persons. In saving many persons, they may probably kill one or two. To save many even by causing death to a few is the maximum which will always be followed. One may be killed so that many may be saved. That is also the maxim contained in our Puranas. Therefore, there is nothing bad about the provision in this Bill.

" Then, with regard to one or two objections that better phraseology and that better grammar could be used. I see nothing ungrammatical in this Bill to which objection can be taken.

" Then, Sir, it is said by Dr. V. K. John that this is a lawless law. I am against that phrase. Though we are in a position to use any phrase against a Bill, we cannot call this a lawless law. I do not know why my hon. Friend is so much opposed to Sub-Inspectors being given this power. The Sub-Inspectors have hearts and they have feelings and they are members of this democracy and they are the subordinate executive officers of the Government. So, if any Sub-Inspector is found to be at fault, Government will know that such and such a Sub-Inspector is at fault and steps will taken to remove him from the place of disturbance and certainly another Sub-Inspector will be appointed in his place."

SRI B. NARAYANASWAMI NAYUDU :—" The Sub-inspector may walk to the place and shoot even though he may not have jurisdiction. That is what the Bill provides."

SRI M. NARAYANA MENON :—" That I think is not correct. The Sub-Inspector in Madras is not a Sub-Inspector in Malabar. According to the order of appointment given to him, he has got jurisdiction only in Madras and not outside. Again, the Sub-Inspector is also a human being, like any one of us and he will not shoot anybody, anywhere and under any circumstances. If that is so, then this is a lawless law. But that is not the meaning or the intention of this Bill. A Sub-Inspector is not a Sub-Inspector except in his jurisdiction. A Judge of the Madras High Court is not a Judge of the Bombay Presidency or of the Central Provinces. Similarly, a Sub-Inspector is a Sub-Inspector only in the place where he has jurisdiction. That is my interpretation and that is the proper and correct interpretation. With these words, I oppose the amendments."

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THE HON. SRI K. MADHAVA MENON:—"Sir, I am very sorry that certain matters have been brought into the discussion of this Bill which I wish had not been brought in at all. It is just like the proverb which says: 'Give a dog a bad name and hang it.' My hon. Friend, Mr. Narayanaswami Nayudu, brought in Mr. Dyer's name. All the reports about Mr. Dyer and particularly the enquiry was read. I am very sorry that Mr. Narayanaswami Nayudu should have stated that.

"Sir, Mr. Dyer fired upon people who assembled in a place for prayer and not for committing any arson, rape or such other things. Those people were assembled for prayer and those unarmed people were shot by that man mercilessly. I am sorry, Mr. Narayanaswami Nayudu should have brought in the analogy of that man and the cheek of that man should be glorified as courage and conviction. I am sorry we have come to that stage. He has said it cheekily that he shot with the idea of teaching a lesson. I am sorry we have come to that stage."

SRI B. NARAYANASWAMI NAYUDU:—"Suppose a Sub-Inspector says that he has got the power to open fire and so, shoots any person saying that it is for the purpose of restoring order, is he right or not?"

DR. V. K. JOHN:—"It is an inconvenient question."

THE HON. SRI K. MADHAVA MENON:—"It is not an inconvenient question and Dr. John need not come to my rescue and I feel Mr. Narayanaswami Nayudu is as much capable of looking at things for himself as Mr. John. So, let us see the position. Even Mr. Narayanaswami Nayudu, a lawyer as he is, has forgotten that the ordinary law which is on the statute book is not sufficient to meet the situation. The argument of Sri Suryanarayana Rao is a bit inconsistent. He said that the police rules and orders give sufficient powers to deal with emergencies. If the police rules and orders give such enormous powers, I cannot understand why such powers cannot be taken under this legislation. I cannot also understand his saying that the police orders give all those powers contained in this Bill.

"Then, in clause, 5, Sri Narayanaswami Nayudu wants to omit the words 'or the carrying of weapons or things capable of being used as weapon.' I am asking Sri Narayanaswami Nayudu that if a person is going in a disturbed area and if another person is going behind him with a penknife and if a Sub-Inspector finds it out from a distance, cannot he prevent the man using the penknife or other weapon so that the first person may not be injured? I may state that section 100 of the Indian Penal Code provides for this. I have got the right to kill another person if I find that person going to rape or cause grievous injury to another person. Even the ordinary law provides this for saving innocent persons. When such is the case, it is all the more necessary that these powers should be specifically given in a 'disturbed area' where such offences are likely to be much more organized. We cannot imagine a Sub-Inspector taking into his head to shoot any

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individual going behind any person without any cause. It is not at all the intention. What is provided for is that a person is prohibited from carrying arms in a particular place and if he does so in contravention of the provision, then he may even be shot. No Sub-Inspector or Magistrate is foolish enough to shoot at any man without any cause. If he does so improperly, then certainly Government will take action on the executive. This power is only granted to prevent the commission of such offences. Even under the ordinary law, not only the police officers but even the private individuals have been given power to kill a person in certain circumstances. Those circumstances, in a disturbed area, will be much more exaggerated because there will be organized disturbances. If my hon. Friends had only heard the sort of stories how people suffered in the disturbed areas—God forbid such conditions arising in our Province then it is absolutely necessary that we should have these provisions ready, and these powers cannot be compared, by any stretch of imagination, with the shooting of unarmed people assembled for a prayer. It is rather unfortunate that Sri Narayanaswami Nayudu should have referred to it.

“ Sir, taking the amendments one by one, first of all, Sri Narayanaswami Nayudu moved an amendment to clause 5, viz., to omit the words, ‘ or the carrying of weapons or things capable of being used as weapons.’ If those words, are removed, then there is no necessity for this Bill, because it is the very thing that we want to prevent. Carrying of arms would enable a person to do mischief in ‘ a disturbed area ’. That is why the Government have come to the conclusion that they should not allow any carrying of arms in a disturbed area. Perhaps the Government may declare an area as ‘ a disturbed area ’ after taking the advice of High Court Judges. But, unless this power is taken to prevent persons carrying arms in a disturbed area, it will not be possible to prevent greater disturbances taking place. You can do lesser harm to save the greater harm being done. That is only what is contemplated in this Bill. When we deal with a disturbed area, it means that we are dealing with an atmosphere where there is considerable excitement, where people are likely to go out of their balance. It is only in such cases, these provisions can be used and will be used. The primary need is to declare an area to be a ‘ disturbed area ’. That is the most important thing in this matter. Mr. Narayanaswami Nayudu has not moved his other amendments and therefore, I need not unnecessarily go into them and worry about them. I may say that there is no incongruity in drafting.

“ Sir, Mr. Suryanarayana Rao wanted that instead of the words ‘ such warning ’ in clause 5, the words ‘ due warning ’ should be used and also the words ‘ if any, as he may consider necessary ’ to be omitted. I am sorry, this is also overlooking the conditions in which a thing has to be done. Mr. Suryanarayana Rao swore by the Police Orders and Mr. Narayanaswami Nayudu swore by the Criminal Procedure Code. I may at once

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point out that sections 127 and 128 of the Criminal Procedure Code contemplate normal conditions. They do not contemplate abnormal conditions. Under normal conditions, if a situation arises where an assembly of persons becomes riotous, the magistrate can declare it as an unlawful assembly, and the policemen can use sufficient force to disperse that assembly, even to the extent of causing death. When it is so even in normal conditions, I cannot understand why under abnormal conditions when an area has been disturbed, when excited people begin to commit, loot, arson and rape, such powers should not be taken. Moreover, when normal conditions prevail, there is enough time for a magistrate to use his powers but in abnormal conditions, that is not so and therefore, this power is being given.

3-30 P.M. "If it is possible, he should give a warning in sufficient time. Sections 127 and 128 insists that he should give a warning. It contemplates normal conditions, but in abnormal conditions there will not be time or opportunity to give a warning. If half a dozen policemen see a mob of 2,000 men committing an offence, they should act promptly. It would be impossible to give a warning and sometimes if a warning is given, the mischief could not be stopped. The words "if any" have been advisedly used. If it is possible to give a warning, a warning should be given. If it is necessary to act without giving a warning, the police should do so. There is nothing wrong about it and the words 'if any' should remain.

"Then Sir, I come to Dr. John's amendment for the omission of the words 'and any police officer not below the rank of sub-inspector'. Dr. John wants to have a magistrate even if it is an honorary magistrate. Dr. John imagines that the police sub-inspector is a dangerous person. I am glad that Dr. John has absolute confidence in the Government and is willing to have the power vested in us so that we may give that power to any officer we choose. Sir, we declare a particular area as a disturbed area and the sub-inspector in charge of that area is nominated as the officer to exercise these powers. My hon. Friend's imagination is running riot when he says that when once the police officer is invested with such powers we would have no control over him. The police officer will not run riot if the Bill is passed by the legislature. The police officer on the spot is to be given sufficient powers. There is no ground for the fear that the police officer of the neighbouring area will do the same thing. He has no jurisdiction to do it and if he acts without jurisdiction, action will be taken against him. Under the circumstances let us not confuse ideas, let us not be taken as people who cannot understand things. I am sorry to say that an attempt has been made to confuse things and made it appear that what is being done is to give the police such powers as General Dyer had at Jallianwallah Bagh. That is not the correct position and the correct attitude. I oppose the amendments, Sir."

SRI B. NARAYANASWAMI NAYUDU :—"Sir, The Criminal Procedure Code gives power to disperse a mob but what General Dyer had was the power to restore order. General Dyer said: 'I did fire not for the purpose of dispersing the mob, but for the

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purpose of terrorising the country and restoring order.' Similarly suppose the sub-Inspector says to-morrow : ' Yes, I did fire on the mob. If I had asked them to disperse they would have dispersed. But I fired on them because I wanted to restore order in the country. If I did not fire, order would not have been restored.' Under those circumstances, is he protected or not? "

THE HON. SRI K. MADHAVA MENON :—" He is not protected."

SRI B. NARAYANASWAMI NAYUDU :—" There is a great difference between ' for the purpose of dispersing a mob ' and ' for the purpose of maintaining order '. General Dyer said : ' I did order fire for the purpose of striking terror in the Punjab and he was protected. Even now, I am repeating that both the Hon. Mr. Madhava Menon and Mr. Narayana Menon did not raise this point at all. I wish they answered the question whether it is legally justifiable for a sub-inspector to shoot a person not for the purpose of dispersing a crowd but for the purpose of restoring order and striking terror in the country. That is the mischief of the whole section. The final report of the Riot Enquiry Committee has definitely stated that the words " for the purpose of dispersing a mob " should be used. It is not a question of mere words and I am not trying to confuse the thing. I will only say that the Hon. Minister is trying to confuse the thing. If a sub-inspector says that he fired upon a person not for the purpose of dispersing a mob but for the purpose of maintaining order, the Government may dismiss him, but he cannot be prosecuted and he is not in law responsible for the acts done by him."

THE HON. SRI K. MADHAVA MENON :—" I think, I have answered the question raised by my hon. Friend. My hon. Friend asked whether a sub-inspector who shoots for restoring or maintaining order is protected. I say he is perfectly protected. But if a sub-inspector shoots for the purpose of striking terror or teaching a lesson, then he is not protected. That is all the difference between what General Dyer did and what the sub-inspector might do under certain circumstances, the very wording of the section shows that if a sub-inspector shoots for the purpose of maintaining order or restoring order, if it is necessary to do so, then he is protected. That is my answer. He is definitely protected. But if like General Dyer he shoots in order to strike terror or teach a lesson he is not protected and he should never be protected. That is my answer, Sir."

The amendment of Mr. Narayanaswami Nayudu, the amendments of Mr. Survanarayana Rao and the amendment of Dr. John were put to the House one after another and lost.

Clause 5 was put to the House and declared carried. Sri B. Narayanaswami Nayudu demanded a poll and the House divided.

(The division bell was rung.)

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DR. V. K. JOHN :—" Will the matter be left to the free vote of the House, or will there be a party whip? "

AN HON. MEMBER :—" Every vote is a free vote."

SRI C. N. MUTHURANGA MUDALIYAR :—" It is none of the business of Dr. John. It is a matter for our conscience. (Inter-ruption.) We have all consulted our conscience."

Ayes.

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| 1 The Hon. Sri K. Madhava Menon. | 12 Sr. M. Sudarsanam. |
| 2 The Hon. Dr. T. S. S. Rajan. | 13 „ N. Ramabhadra Raju. |
| 3 Sri L. Subbarama Reddi. | 14 „ T. Purushoth m. |
| 4 „ B. Bhima Rao. | 15 „ K. Natarajan. |
| 5 „ M. Narayana Menon. | 16 „ S. Jayaram Reddiar. |
| 6 „ N. Venkatachalamaj. | 17 „ M. K. Sundarama Iyer. |
| 7 „ N. Sankara Reddi. | 18 „ C. Perumalswami Reddiyar. |
| 8 „ M. Narayana Rao. | 19 „ N. Ranga Redd. |
| 9 „ S. K. Salingopa Mudaliyar. | 20 Mr. A. T. F. Rodriguez. |
| 10 Dr. U. Rama Rao. | 21 Sri C. Veerabhadra Rao. |
| 11 Sri C. N. Muthuranga Mudaliyar. | 22 „ P. R. K. Sarma. |

Noes.

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|---------------------------------------|-------------------------------------|
| 1 Sri R. Suryanarayana Rao. | 5 Sr. B. Narayanaswami Nayudu. |
| 2 Mrs. M. N. Chubwala. | 6 Dr. Sir A. Lakshmanaswami Mudali- |
| 3 „ M. Hensman. | 7 „ ar. |
| 4 Sri M. D. T. Kumaraswami Mudaliyar. | 7 K. Uppi Sahib Bahadur. |
| | 8 Dr. V. K. John. |

Ayes 22, Noes 8.

Clause 5 was carried.

Clause 6.

* DR. V. K. JOHN :—" Sir, I move the following amend-ment :—

' In clause 6 after the words " in respect of anything " and before the words " done or purporting to be done ", the words " in good faith " shall be inserted.'

3-45 P.M. I do not wish to make a long speech in moving my amendment. In view of the very wide and arbitrary powers conferred by clause 5, I think it would be a check on those on whom these powers are conferred, if the legislature provided that they will be protected only if they act in good faith. The words ' in good faith ' occurring in legislations similar to this, are conspicuous by their absence from clause 6. Clause 6 should read as follows :—

' No prosecution, suit or other legal proceeding shall be instituted except with the previous sanction of the Provincial Government against any person in respect of anything in good faith done or purporting to be done in exercise of the powers conferred by section 5.'

" I do not know why the Government do not want to at least curb these very extraordinary and arbitrary powers given to officers including police inspectors by adding the words ' in good faith.'

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Is it their intention that, if any person does something *mala fide* and not in good faith, he should be supported and protected? Is the Government objecting to the provision that it should protect only persons who in good faith shoot or order shooting of other persons? The Government should have introduced the words 'in good faith' which are always used in legislations like this. It might be that the Government's draftsman forgot such a provision; or he might have copied from Bills passed by other provinces; he might have thought that there were precedents. Perhaps it is a question of prestige or the Government's attention was not directed to it, when the Bill was passed by the Assembly. The Bill is before the Council. I am positive that as day follows night and night follows day, the Hon. Minister will oppose this amendment also, in spite of the fact that the omission of the words may be due to an oversight or bad judgment and not on merits.

"I am equally sure that my amendment will not be carried. The provisions of this Bill are not left to the free voting of this House. There is voting by parties. I repeat this fact because my hon. Friend, Mr. Muthuranga Mudaliyar got upon his feet and protested against my remark which I made previously. I did make that remark; I made it deliberately, I made it intentionally, because I heard a few Members on the Congress side speaking against the provisions of clause 5 of this Bill. After they have spoken against a provision in the Bill, it should follow in the ordinary and natural course of events, that their conscience should ask them not to support clause 5 of the Bill. Therefore I thought it was party discipline which is in force not only here but in other places also that makes a member vote against his own opinion. I deliberately made the remark that every Bill which does not involve the question of confidence in the Government, should be left to the open criticism and open vote of members to whatever party the members were affiliated. Independent members have got this very great advantage. I myself would have voted one way when some of my friends would have voted in the other way. They can keep their conscience; they can vote in the way their conscience dictates. The question may be asked why I have brought forward this amendment when I know previously what would be the attitude of the Hon. Minister and how he would get up on his feet and say that he opposes this amendment. I think that it is my responsibility and duty as a lawyer member of this House, to point out such omissions. I think the omission of the words I have referred to in clause 6 is a very serious omission. The words 'in good faith' would be a check on the action of the officer, in bad faith or *mala fide*, on whom very wide powers of life and death without control, are conferred."

SRI B. NARAYANASWAMI NAYUDU:—"Sir, a police officer may shoot a person not for the purpose of restoring order but for striking terror. I do not want to repeat my arguments. A police officer may shoot a person not because the latter committed any offence, but because the former wants to prevent other persons from committing serious offences. In such a case, is the officer to

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be protected? He should have acted in good faith. If he acted in bad faith, he is liable to be prosecuted. The words 'in good faith' do not find a place in this clause. A police officer can shoot a man in the street if the latter was going to shoot another person, but not because he is in a disturbed area. Is he justified in doing so? That is the point I want to ask."

* THE HON. SRI K. MADHAVA MENON :—" Sir, I do not want to join issue with my hon. Friend, Mr. Narayanaswami Nayudu and go over the same ground. If he will read clause 6 in the way in which I read it and others should read it, there is no room for any doubt in the matter. It is not every officer, but only that officer who does anything in pursuance of this Bill is protected, though the words 'in good faith' are not in the clause. The man who is protected is only that person who does anything or purports to do anything in exercise of the powers conferred on him by section 5. What are the powers that are conferred under section 5. For the purpose of restoring or maintaining public order in a disturbed area, an officer is entitled to use force even to the extent of shooting a person. Nobody else is protected other than the person—the point is specific—who is doing anything for restoring or maintaining public order, or who purports to do so. Only those persons who are permitted to exercise the powers conferred under section 5 are protected. If a person, out of his whims and fancies, shoots another person not in exercise of the powers conferred on him, he is liable to be prosecuted under the Criminal Law Act. The words 'in good faith' are not necessary. Dr. John has not shown any law in which these words are not inserted. I challenged him if these words are in a similar legislation dealing with unusual conditions. I referred him to the normal procedure of the Criminal Procedure Code—section 132. The words 'in good faith' are not there. No prosecution against any person acting under that section can be instituted in a criminal court except with the sanction of the Provincial Government. Only certain classes of officers are protected, not all officers. Certain officers cannot be prosecuted except with the sanction of the Central Government. These words are not there also. These words need not be inserted in section 6. Therefore this amendment I cannot accept."

* DR. V. K. JOHN :—" Sir, I want to say only one word in reply. The Hon. Minister said that the person should do anything only for the purpose of maintaining or restoring public order under clause 5. That clause says that any officer may, if in his opinion it is necessary so to do for restoring or maintaining public order, order fire to be opened. The Hon. Minister has omitted to notice the words 'in his opinion'. According to clause 5, everything is left to the judgment of the officer. His judgment may be wrong and may not be bona fide. The officer exercising the judgment may be *mala fide*. We are giving him large powers under clause 5. We must make it difficult for him to use his wrong judgment, by having the words 'in good faith' in the clause. We are leaving everything to his discretion. That is the point I urge. The Hon. Minister has not read the words 'if in his opinion it is necessary'

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in clause 5. The officer may form his opinion either rightly or wrongly. If his actions are *mala fide*, he ought not to be protected. The words 'in good faith' should be inserted in clause 6. I am quite sure that there cannot be any difference of opinion on this point. This Bill has been drafted by copying the provisions of similar Bills passed by some other provinces. Perhaps the draftsman was ignorant on this point. He is responsible for the mistake. He has repeated the clause in the Bills passed by other provinces. This Bill has been passed by the Assembly. Arbitrary powers have been conferred on officials to take the lives of men and women. We must tell them that they will not be protected unless they took action in good faith. I say that this amendment ought to be accepted by the Government. It is merely prestige that stands in the way of this amendment being accepted."

* THE HON. SRI K. MADHAVA MENON :—" It is not 4 p.m. a question of prestige. I shall certainly not subject a police officer or any officer purporting to act under section 5 to the malice or to the private grudge or the imaginary grievance of any individual when he acts in certain circumstances. I oppose the amendment."

The amendment was put and lost.

Clause 6 was put and carried.

Clause 1 was put and carried.

Preamble was put and carried.

THE HON. SRI K. MADHAVA MENON :—" I move that the Bill be passed into law. Even though the Home Minister is not present here, I shall certainly, faithfully inform him of the discussions that have taken place here and the discussions of the report he will certainly read. There is no doubt about it. I can certainly say that the Home Member and Government will take the greatest possible care in using this Act for which no necessity may arise. Bearing in mind particularly the very good advice that has been tendered to us, in the spirit in which it is given, I request, Sir, that the Bill be passed into law."

* SRI R. SURYANARAYANA RAO :—" I have only a word to say. I was very pleased to hear the Hon. Minister Mr. Madhava Menon say that there has been a complete change in the outlook of the police since August 15. I wish it were true and I wish it were true again that such a miracle has happened at least after the 30th January. I can only pity the pathetic belief the Treasury Benches seem to have in the police in handing over to them powers which they have in the past often abused and I am sure some are going to abuse them in the future also, if we remember the days of 1942 and the previous occasions, when the police used even their limited powers against those who are sitting on the Treasury Benches and those behind them. Knowing that, should not some method be found to control the police officers to whom the Government are handing over so many powers? And the object of the members on this side, is to draw pointed attention

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to the fact that in the past such powers have not always been rightly exercised. Please see when you give them these powers, you put sufficient restraint on them holding them responsible if they abuse. That is all the spirit in which Dr. John moved for the insertion of the words 'in good faith'. My friends being in power seem to forget the past altogether. I wish, as I said, a miracle has really happened. I claim many police officers among my friends and I know there are good and bad amongst them. We want same restraint to be placed on them lest the good may become bad when invested with such uncontrolled powers. If the Government want powers, let them exercise. We are perfectly willing to invest them to maintain peace and order and to that end let them take all the powers they need. But when they delegate their powers, let them see that those powers are delegated to proper persons and they are properly exercised. How is it possible for the Hon. Minister sitting in the Fort St. George in Kistna district which has been, let us take it, declared as disturbed area, has used his power to fire upon even an individual or a crowd properly? How is it possible to find it out? It is very difficult. That is why we wanted they should be liable to prosecution or proceedings for improper use of powers a right which is exercised in all parts of the civilised world by ordinary citizens and which is being deprived now. May I ask the Government at least whether they would order a public enquiry whenever shooting is restored to by the police. Let them give an undertaking that whenever firing is resorted to by the police, Government will hold a departmental or public enquiry into the conduct of those officers concerned and if they found that they are really guilty of the abuse of power, they would take action. Let them give us that assurance. That is all what we wanted. This assurance, any popular Government must be prepared to give. We have every faith in the Government. Yet we want that the powers which they are giving to their police officers should be properly utilized for the real purpose for which this enactment is pushed through this Council. I hope the Hon. Minister Mr. Madhava Menon will convey our wishes to the Hon. Home Minister that whenever firing is resorted to and if there is a complaint that it has been resorted to without proper provocation, that the Government would order an enquiry either departmental—of course we know the fate of departmental enquiries—but still some enquiry so that people may be satisfied that the powers vested in the police officers have been properly used and if abused they will be dealt with severely."

* DR. V. K. JOHN :—" I strongly support the suggestion made by Sri R. Suryanarayana Rao that the Government now can give an undertaking that in any case where a firing had been opened, there would be an enquiry even departmental enquiry so that the police officers may from now know that there is some restraint, there is also some enquiry and therefore there may be restraint in any action which they may take under the Act.

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I express the hope that this Act will not be put into force and there will be no occasion for it. The members of the Government who are popular Ministers and also members of this House and the Lower House and who are leaders of public opinion and also other leaders of communities and political parties must make a very serious endeavour, now that we are passing this Act into law to see that this Act is not put into effect."

SRI B. NARAYANASWAMI NAYUDU :—" A very arbitrary power, an atomic bomb, has been placed in the hands of the Government and I believe the Hon. Mr. Madhava Menon will communicate to the Home Minister my request that he will not make use of the provisions of this Bill until he is compelled to make use of them. The pity of the whole thing is that the trouble is not with regard the Home front. The atomic bombs can work there. But they do not go beyond the threshold of provincial borders, viz., the foreign Government."

* THE HON. SRI K. MADHAVA MENON :—" We shall certainly bear in mind the suggestion that has been made. But I do not want to be misquoted. I did not say that after the 15th August there has been a complete metamorphosis in the attitude of the police. What I said was that we cannot treat the police as mercenaries after the 15th of August, and there must be a change also in our attitude towards them. They have a stake in the country such as any one of us. That is what I pleaded and still plead for. I entirely agree with Dr. John and Mr. Narayanaswami Nayudu that there may not be any occasion to use it. Dr. Subbarayan told in the other House also, words to this effect. I move that the Bill be passed into law."

The motion was put and carried. The Bill was passed into law.

(2) THE MADRAS AIDED INSTITUTIONS (PROHIBITION OF TRANSFERS OF PROPERTY) BILL, 1948 (L.A. BILL NO. 1 OF 1948).

* THE HON. SRI T. S. AVINASHILINGAM CHETTIYAR :—" I move—

" that under rule 15 (3) of the Council Rules, the order of business be revised and the motion standing in my name in connection with the Madras Aided Institutions (Prohibition of Transfers of Property) Bill, 1948 (L.A. Bill No. 1 of 1948) be taken into consideration."

The motion was put and carried.

THE HON. SRI T. S. AVINASHILINGAM CHETTIYAR :—" After the excitement which the previous Bill recently afforded, this will be a tame measure. All the same, this is a very important Bill because it affects the future status of the educational institutions as well as the future policy of Government with regard to the capital grants. This is a very small Bill and it may be summarised in a few words. Members of this House would have